IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN FRANCISCO

(Before the Examiner)

Vancouver, B.C. 08 May1999

IN RE COMPLEX ASBESTOS LITIGATION	)	NO. 828684
PATRICIA HENLEY	)	NO. 995172
DOLORES ROVAI	)	NO. 996380
WANDA ROBINSON, et al	)	NO. 996378
LUCY ELLIS, et al (WD STANLEY ELLIS)	)	NO. 998146
RICHARD DONALDSON et al (WD ALBERT PAVOLINI)	)	NO. 992223/998147
JOSEPH NAEGEL, (WD EDWIN BRIGHAM)	)	NO. 992230/998538
DONALD SELLERS, et al	)	NO. 996382

CONTINUED DEPOSITION OF DR. RICHARD J. POLLAY, Ph.D.

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APPEARANCES

Ms. M. Chaber	Appearing for Plaintiffs in California action
W. Wilner G. Maxwell	Appearing for Plaintiffs pro hac vice
Ms. S. Foe	Appearing for Liggett Group
W. Sayers	Appearing for Armstrong World Industries
Ms. L. Mason G.V. Barron	Appearing for Philip Morris Inc. and others
K.J. Dunne	Appearing for Brown & Williamson Tobacco Corporation
H.J. Escher III	Appearing for R.J. Reynolds Tobacco Company

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May 8, 1999
Vancouver, B.C.
RICHARD POLLAY: Previously sworn
EXAMINATION BY MR. ESCHER (Cont'd):

Q Good morning, Dr. Pollay. You understand you're still under oath?
A I do.
Q Let's turn to tab 15 of Exhibit 4, which was the next in order for us to discuss. This is the Long-to-Horrigan memo of July 22, 1980. Do you see that?
A Yes.
Q Do you see the reference to various planned activities in the last paragraph of that memo?
A Yes, I do.
Q Do you know what activities those were?
A No, I don't, not offhand, not by recall.
Q And --
A But they're activities -- I would accept generically they're activities to reverse the problems they were having among teenage smokers 14 to 17.
Q But you do not in fact know what the planned activities were, do you?
A Not as we sit here today, no.

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Q And you've never spoken to Jerry Long about this?
A No, I have not.
Q Or to Mr. Horrigan?
A No.
Q And have you ever viewed any testimony or affidavits by either one of those individuals about what they meant?
A Not that I recall, no.
Q And this document isn't a marketing plan, is it?
A It's a marketing document. It's a discussion of market research reports, but it's not a plan per se.
Q And have you seen any Reynolds marketing plan during this time frame, 1980?
A Not that I recall. I don't think this has been produced.
Q Let's turn to tab 18 of Exhibit 4. This is a memo from Nordine to -- I believe it's Fackelman dated April 13, 1984. See the reference to younger adult smoker in that document?
A Yes.
Q Okay. And do you see any reference in this document to smokers under the age of 18?
A No. I think this is after the date where they decided to change their terminology.

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Q That's your assumption, isn't it?
A No. There were -- I have seen documents that express the policy of let's clean up our terminology.
Q Do you recall which document that is?
A Pardon me?
Q Do you recall which documents you're referring to?
A No, I don't.
Q You don't?
A But it was in the Mangini case.
Q Isn't it true that this document, tab 18, refers to younger adult smoker and also refers to smokers choosing a brand at age 18? Isn't that what it says?
A I don't find the reference you're referring to.
Q Look at the third paragraph of the document, the second sentence which states as follows: "The smoker chooses" -- and I can't read this -- I think -- "the earliest brand at age 18. Perhaps it is Marlboro or Newport". Do you see that?
A Yes.
Q Just looking at the context of this memo itself, wouldn't you conclude that the reference to younger adult smoker is a reference to smokers

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age 18 or over?
A At this point in time, yes, the language has been cleaned up by policy.
Q But that's what the document says?
A Yes.
Q Dr. Pollay, how much have you charged for all of your efforts in tobacco litigation to date, from the very inception of your work to this point?
A I'm not certain because I received none of this as personal income. It all goes into the university to either cover the costs or provide an endowment for the marketing division for all such future research activities.
Q But you send out the bills, don't you?
A Yes.
Q Okay. And do you have any sense for how much you've charged for all of your efforts to date?
A I don't exactly, but I would think that over the 12 years the accumulated endowment is now something over $300,000 over the 12 years.
Q So you've charged more than $300,000 for all of your efforts during that time period?
A Well, that's the -- that's -- I think on an average there's been about maybe $25,000 a year donation to the university in lieu of fees, yes.

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Q And all of your expenses that are incurred in connection with your work, that's on top of that endowment amount; is that right?
A Yes. That's the residual that persists in the endowment account after the expenses have been paid for.
Q So how much of your time do you think you've spent on it over that time period? Would you say a quarter of your time?
A No. I would say -- let me think. I would say probably less than 10 percent of my time in consulting activities that would produce billable hours if I had wanted to bill it for personal income. Of course, my research activities have been focused on the same topic, so aside from my teaching, I've spent a lot of time on tobacco advertising as a topic of inquiry.
Q And how many times have you testified in Court on behalf of parties adverse to the tobacco industry?
A I don't know. We produced the list of all the testimony and depositions. We'd have to go through that to see which of those involved testifying in court versus which of those were depositions.

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Q And that was one of the documents you produced yesterday?
A Yes. And it's been -- earlier versions have been produced in all earlier depositions like this.
Q Yesterday when I asked you some questions about consumer expectations for the ordinary consumer in California, you gave me a variety of responses. Were your responses based solely on your review of polling data?
A No. You asked that and I answered that. No.
Q And what else was it based on, because I've forgotten.
A Polling data. My awareness of the volume and character of advertising to which people had been exposed, particularly throughout the fifties and early sixties, that offered them the fraudulent reassurance that the filters were a technological fix to the health concerns.
Q And the polling data you reviewed, was that only Gallup poll polling data or were there other polls as well?
A There were -- I've seen other polls. I've seen Roper polls and other polls as reported in the surgeon general's reports.
Q So that would be Gallup polls, local polls and

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other polls that are referred to in the surgeon general reports?
A Yes.
Q Okay. Dr. Pollay, isn't it true that the reasons why adolescents start smoking has been the subject of extensive scientific research over the last 40 or more years?
A Yes.
Q And government has studied it; is that right?
A Yes.
Q And academics have studied it?
A Yes. It's been the subject of extensive review in the 1994 surgeon general's report.
Q And public health organizations have studied it as well, haven't they?
A Yes.
Q And that research has identified a number of risk factors that are associated with why people start to smoke other than advertising; isn't that right?
A Well, it is a large number of risk factors, many of which are influenced by advertising such as the perceptions of people as to the health risks of the product, the perceptions of people as to the incidence of smoking, that is how many people

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smoke, the perceptions of people as to what kind of social approval they'll get from smoking, social support, perceptions of people about the benefits they'll receive. I mean all these are influenced by advertising. Even the classic notion of peer pressure is very much influenced by advertising. So these are not separable concepts.
Q So you don't think that the concepts are separable at all?
A They -- oh, I mean -- well, in your mind you can make whatever separation you want, but they are overlapping concepts. Peer pressure, for example, is very much influenced by advertising. I mean peers get their notion that one brand is masculine or feminine and another brand is cool or not from the advertising. It doesn't come out of thin air.
Q And what about parental pressure? Is that influenced by -- or parental influence, is that associated with advertising as well?
A Indirectly. I would say less so. Parents who are smokers, of course, are acting as role models, but their attitudes towards advertising -- or their attitudes and knowledge

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about cigarettes and the risks thereof have been influenced by advertising, so sure.
Q Do you consider yourself an expert in the subject of why adolescents start smoking?
A Yes, relative to most people, certainly relative to almost all of my colleagues and business schools.
Q You do consider yourself an expert in tobacco marketing; is that right?
A Yes.
MR. ESCHER: Isn't it fair to say, doctor, that you're much more of an expert in tobacco marketing than you are with respect to the issue of why individuals start smoking?
MS. CHABER: Objection. Vague and ambiguous.
THE WITNESS: Again, I don't think these are easily separable concepts. These are one and the same. I mean it's hard to be an expert in marketing without appreciating consumer behaviour.
MR. ESCHER:
Q Now, are you familiar with research conducted by the American Cancer Society in 1958 about why youths smoke?
A 1958? I don't recall that, no.
Q And are you familiar with studies by the

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Department of Health, Education and Welfare on why youths smoke?
A What date?
Q About 196 -- excuse me -- 1972.
A I don't recall that.
Q Now, are you familiar with HEW's 1979 publication on teenage smoking?
A I don't recall that either.
Q And the 1979 surgeon general's report? Have you reviewed that?
A I have. I don't recall that its focus was on children, however.
Q I'm going read you a passage from the 1979 surgeon general's report and tell me whether you agree with this conclusion.
A I'd like to see the report, please, if I can see the context.
Q I don't have a copy of it with me right now, so I'm going to read you a specific passage.
A Well, I'd at least like to see the pages from which you're reading this excerpt.
MR. ESCHER: Why don't I read it to you and then I'll show you the copy. Here's the passage:
"In a task force report on respiratory diseases, the National Institute of

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Health state that mass media have been used extensively in anti-smoking efforts, but exactly how they influence behaviour is unclear. Ward reports that in a study designed to ascertain attitudes toward television commercials and to analyse the efforts of television advertising on adolescents, the television medium appears to influence the formation of ideas and attitudes yet does not trigger adolescents to buy a product. Ward's study indicates that cigarette ads are perceived by teenagers as hypocritical and they're listed as least liked while anti-smoking ads are perceived as straightforward and are liked."
Do you think you would agree with that conclusion?
MS. CHABER: I would object. It's vague and ambiguous. It's out of context, improper cross.
MR. ESCHER:
Q Okay. Please answer the question.
A I will if you'll give me the document so I can see it.
Q I just read it to you. Is there something

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that --
A I would like to reassure myself that you're not taking it out of context.
Q Would you agree with that statement?
A I will respond to your question when you give me the document in question.
Q Why can't you tell me whether you agree with that statement or not?
A I hesitate to agree with Mr. Ward because he's been arrested for child molestation in Philadelphia. Professor Ward has a scandalous reputation for exploiting children.
Q And so that's your reason?
A That is a compelling basis. I would like to see the context here if you want me to explore that further.
Q I don't see why you need to see any kind of context to tell me whether you agree or disagree with that statement. Are you telling me you disagree with it because you consider Professor Ward to be a child molester?
A I don't consider him one way or the other. I haven't reached a conclusion. I just know that he was arrested for that.
Q Would you --

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A So I don't consider him a reliable resource as a consequence.
Q Do you consider that cigarette advertisements trigger adolescents to buy a product?
A Trigger? I'm not sure -- I'd have to look at the document to understand what you mean by trigger.
Q What do you mean by trigger?
A It usually means that the exposure to a single ad induces the behaviour in question, like an impulse purchase. You're at a retail counter. You see the candy bar. You buy the candy bar.
Q And you would agree that cigarette advertisements don't work that way?
A Very rarely. There may be impulsive shoplifting and the like because of displays that are placed conveniently for adolescents, but generally speaking we don't see impulse behaviour as a consequence of advertising so much as changing of attitudes, perceptions and shaping of beliefs and undermining health effects as a consequence of advertising, undermining health messages.
Q You're familiar with the 1994 surgeon general's report?
A Yes.
Q Isn't it true that in that report the surgeon

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general identified numerous risk factors for smoking initiation among minors?
A Yes. And a great number of those were linked to advertising, as we discussed earlier, just about five minutes ago.
Q And that 1994 surgeon general's report summarizes literally hundreds of studies on a variety of topics related to youths smoking, including why people start smoking; isn't that true?
A Yes. Particularly the advertising which was the subject of Chapter 5, which I helped to author.
Q And do you consider the 1994 surgeon general report authoritative as of that point in time?
A Yes.
Q And Chapter 4 of the report is devoted to what are called psychosocial risk factors for initiating tobacco use; is that right?
A Yes. And those are linked to advertising in Chapter 5 and the conclusions of Chapter 5 indicate advertising's influence on those.
Q And the risk factors identified in the 1994 surgeon general's report include a socioeconomic status; is that right?
A Yes. The industry has a history of being particularly effective among the more poorly

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educated and poor income groups.
Q And how much education parents have has been shown to have a significant impact on adolescents' smoking behaviour?
A That's right. The least educated you are, the less likely you are to be well defended against the industry's efforts.
Q And poor academic achievement has also been repeatedly shown to be related to the onset of smoking? That's right too?
A That's correct.
Q And if a young person comes from a home with only one parent living there, that's also been associated with adolescents beginning to smoke; isn't that right?
A I believe that is right.
Q And the ethnic background of the young person is also a -- a variable with respect to the onset of smoking initiation?
A Particularly of the type of cigarette smoking, whether they choose a menthol product or not.
Q And so, for example, African-American young people are much less likely to smoke than white young people; isn't that right?
A Yes, it is.

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Q That's even though they're exposed to similar advertising?
A Well, yes. They're exposed to similar advertising. Of course, most of the advertising features white people, so they're not as exposed to as much advertising of people of their own race as white people are.
Q And whether cigarettes are physically available to young people is also predictive of the onset of smoking; isn't that right?
A That I don't recall, but it makes sense.
Q And whether one parent smoked is also a risk factor for adolescents smoking?
A Yes. As well as parents' knowledge and attitudes and how they interact with the child.
Q And isn't it true that a primary positive relationship between an older sibling smoking and a younger adolescent sibling beginning to smoke has been reflected in the data?
A Yes. And in addition to all of that of course the role of advertising, even taking into consideration all of those.
Q And whether a young person's peers smoke also has been considered an important factor in the onset of adolescents smoking?

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A Yes. That's what the documents refer to as being the in thing, the in product.
Q And risk taking and rebelliousness have also been identified as significant predictors of smoking initiation?
A Yes.
Q And teenagers do a lot of risky things that are unrelated to advertising, don't they?
A Yes.
Q Do you agree that some youths perceive themselves to be invulnerable to the risks of smoking because of a perception of immortality or invulnerability to risks?
A Yes.
Q And that attitude shows up in a number of contexts other than smoking, doesn't it?
A Yes.
Q And it's independent of advertising too, isn't it?
A The naivete of adolescents, yes, it's well recognized by the tobacco firms as well and played upon.
MR. DUNNE: Object. Move to strike. Nonresponsive.
MR. ESCHER:
Q And it's true, isn't it, that a significant

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percentage of young people do engage in a wide variety of risky behaviours?
A I can't speak to a significant -- what you mean by a significant percentage. It's certainly known that adolescents do engage in risky behaviours as a general statement.
Q Isn't it common knowledge that a significant percentage of minors drink alcohol and engage in binge drinking?
A I don't think it's -- it's common knowledge that there's a significant amount of binge drinking.
Q Do you --
A It depends what you mean by significant.
Q Well, what would you mean by it?
A Significant I would say in this context -- let's say a third or more of teenagers as binge drinkers I would call significant.
Q Okay. But you think it's less than that?
A Binge drinking? Yes. I certainly don't think that the majority of people -- that it's common knowledge that the -- more than a third of minors binge drink. I think binge drinking in my experience is not even that common among college students.
Q So binge drinking is a risky behaviour, isn't

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it?
A Yes.
Q And you think that's related to advertising?
A It's not unrelated to advertising. There's certainly a lot of advertising that glamorizes drinking.
Q And you think that causes binge drinking in minors?
A It glamorizes drinking. It entices them to see alcohol as a source of recreation.
Q But my question was: Do you think that advertisements for alcoholic beverages cause minors to engage in binge drinking?
A I think it has a contributory factor, yes.
Q And a number of minors engage in the risky behaviour of driving with someone who has been drinking, don't they?
A I guess so. I mean I think that that's assumed to be an issue from time to time.
Q Right. And that's not caused by advertising, is it?
A Well, in the same sense that the drinking itself is caused by advertising, it makes alcohol seem like a recreation that -- and so you get teens engaging in recreational use of alcohol.

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Q So you think that advertising for alcoholic beverages is a contributing factor to the risky behaviour of teenagers driving with somebody who has been drinking?
A I think the -- the alcohol advertising contributes to the attitudes, opinions, perceptions and beliefs of teens toward drinking and drinkers and their willingness to go along with drinkers and drinking.
Q And a number of minors drive without their seat-belts engaged, don't they?
A Yes.
Q Do you think that's caused by advertising?
A Not that I'm aware.
Q Do you think that's caused by cigarette advertising?
A No. I don't see the connection you suggest.
Q I'm not suggesting that there is one. A number of minors engage in unprotected sexual relations, don't they?
A I don't know. I've never studied that. There seem to be some, enough to be of concern to people who are concerned with AIDS protection.
Q Do you think that's caused by advertising?
A Not -- not alone, not solely.

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Q But partially?
A Well, there's a lot of advertising in other forms of popular media like television in particular, but a lot of fashion advertising certainly helps to popularize sexuality and doesn't do anything to promote safe sex.
Q Okay. So you think that the general information environment that includes advertising that glamorizes sexuality has a contributory causal effect in minors engaging in unprotected sex?
A Yes. And has a contributory impact upon the age at which minors engage in sex and their perceptions about the legitimacy of that behaviour, and so on. It undermines family norms with respect to sexual behaviour.
Q And a number of minors get into physical fights, don't they?
A I don't -- I can't speak to how many. I don't have any experience with that, except the occasional bully in my high school experience.
Q Do you think that's caused by advertising?
A Bullies? No, not particularly.
Q Isn't it true that risky behaviours of youths tend to coincide, just to say that youths that engage in one risky behaviour are more likely to

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engage in other risky behaviours?
A If by that you mean that there are some people who are more inclined toward risky behaviours than others, yes, that's true.
Q So you wouldn't be surprised to see somebody who engaged in binge drinking, driving with somebody who's been drinking, driving without a seat-belt and engaging in unprotected sexual relations be the same person?
A Well, I wouldn't be happy for that person if all of those experiences were being done by the same person, but it's a possibility. There certainly would probably be correlations between these things, that is certain people who are more risk assuming than others and others who are more risk averse.
Q Isn't it true that risk-taking behaviour by youths has increased over the last 25 years in the United States?
A I can't speak to that.
Q Have you ever indicated that in fact the answer to that question is yes?
A I may have. I just don't recall one way or the other as we sit here.
Q Do you think that if you did answer yes to that

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question previously that that would have been an accurate answer?
A Well, it would have been accurate to my understanding at that time. I don't recall as we sit here today.
Q So if you answered yes before, that would have been an accurate answer when you answered it and at the present time your state of knowledge is such that you cannot answer yes to the question; is that fair?
A I don't recall specific data about teenagers becoming more risk prone in the last 25 years as you -- your question asked. I'm willing to have my recollection assisted if you have a document you want to show me.
Q I believe you testified to that effect in the Newcomb deposition on August 12th, 1998? Does that refresh your recollection?
A No. No, it doesn't.
Q It's your view, isn't it, Dr. Pollay, that cigarette advertising provides positive messages about smoking to minors?
A Yes.
Q Do you think that advertising is successful in sending positive messages about smoking to

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minors?
A Yes.
Q If it were successful, wouldn't minors have a positive attitude toward smoking?
A They do. It depends on what age in which you measure the attitudes. You can certainly get suitors to express negatively toward advertising or toward cigarettes if you asked them at the right ages, but as they enter the teenage years and have this drive for independence, their behaviour and attitudes change.
Q If in fact teenagers had a negative attitude about smoking, would that suggest to you that the advertising had been unsuccessful?
A Not necessarily. The effect of advertising is to bias judgments, that is to move people from whatever their predispositions might have been without advertising toward having more favourable predispositions. It doesn't mean you can completely convert everyone to a totally favourable attitude, but the perceptions of how glamorous smoking is, how healthy it is, how many people smoke, all of these kind of things are affected by the great volume of advertising that adolescents experience.

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Q Do you think that an attitude toward smoking that it's a dirty habit is a positive attitude?
A No, but it's not as negative as knowing that it causes the death of a third to a half of chronic users or that it's addictive.
Q But you don't think it is a positive attitude, do you?
A No.
Q Okay. Is it fair to say that one relevant factor in determining why people start to smoke is what the person thinks caused them to smoke?
A No. I mean -- or at least asking questions as to why you started to smoke is notoriously the worst way of assessing the contributions of advertising because people either don't recognize the role of advertising, particularly as it's been cumulative and gradual over their entire lifetime, nor even if they do recognize it are they willing to admit to it.
Q Do you think that asking people why they started to smoke is unreliable for risk factors for smoking other than advertising?
A Yes. In general I think it's biased because when people are asked such a question, they tend to recount their first smoking experiences, which

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are almost always involved with other adolescents and sharing cigarettes, so it tends to bias them toward overperceiving the role of peers and not recognizing the role of advertising or even parents, for that matter, in the entire process.
Q But you're aware, aren't you, that the Gallup poll has over the years asked people questions as to why they started to smoke?
A I believe they've asked some of those questions in the context of a series of related questions.
Q And in other contexts you've relied on Gallup polls, haven't you?
A Yes. Again, particularly when I can see a series of related questions that provide a context in understanding of the methodology.
Q Okay. And the Gallup poll conducted on October of 19 -- October and November of 1991, do you recall that that poll indicated that approximately 48 percent of the respondents said that peer pressure was the reason that they -- main reason that they started smoking?
A I don't recall that nor do I find that question, at least without knowing more about the methodology, to be reliable.
Q Do you think that the Gallup poll usually

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conducts polls in an unreliable fashion?
A No.
Q And are you aware that this 1991 Gallup poll indicated that the next largest group of respondents, counting 15 percent of the respondents, said that the primary reason they started smoking was because some members of their family smoked?
A So this -- I would like to see the question. It sounds like it's a faulty question for a number of factors, one of which it asks people to identify --
Q My question -- you're not answering my question. My question was whether you were aware that that was the result of the poll?
A No.
Q And are you aware that less than one-half of one percent of the respondents in that poll indicated that the main reason they started smoking was because of receiving a sample of a tobacco product?
A No.
Q Okay. And are you aware that only one percent of the respondents in that poll attributed their starting smoking to magazine or TV advertising

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campaigns?
A No. And, as I've said, that's a ridiculously inappropriate method for assessing advertising for several reasons.
Q I think you've already described those, so we don't need to do those again. Are you aware that the food and drug administration conducted some focus group research with respect to 12-to-17-years-olds in connection with their proposed regulations regarding the sale and distribution of cigarettes in 1995?
A I'm aware only of the fact that they did some. I haven't seen the results of those.
MR. ESCHER: Are you aware that the major reasons given by the respondents in that focus group study for starting smoking included peer pressure, doing something adults would not approve of, perception of smoking is cool activity, curiosity, being around parents and other family members and friends who smoked?
MS. CHABER: Assumes fact, lacks foundation, hearsay.
MR. ESCHER:
Q Can you answer the question?
A I'd like to see that if I could. And I find -- it's interesting that's -- the first three things

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you mentioned are all linked to advertising, that is the peers and how they perceive the product, the notion of rebelliousness and risk taking, perceptions of it being cool. These are all things that are very clearly influenced by advertising.

Q And that the FDA's focus groups indicated that most of the participants indicated that they did not believe that they were influenced by cigarette advertisements. That would be consistent --

A Are you --

Q If I can finish the question.

A Are you willing to admit --

Q Let me try and finish the question so you can respond to it. That conclusion doesn't surprise you for the reasons you gave earlier?

A It doesn't surprise --

MS. CHABER: Same objection.

THE WITNESS: It doesn't surprise me because very few people are able to recognize the role of advertising and shaping their opinions or are willing if they are -- can and recognize it willing to admit to it because it makes people seem like they're being played for a sucker.

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MR. BARRON: Move to strike as nonresponsive.

MR. ESCHER: Have you reviewed Dr. Lucy Henke's study regarding --

MR. BARRON: And argumentative.

MR. ESCHER:

Q -- young children's perceptions of cigarette brand advertising symbols?

A Yes. Some time ago.

Q And it was published in a journal of advertising. That's a leading scholarly journal in your field; is that right?

A Yes.

Q And it was cited in the 1994 surgeon general's report?

A Yes.

Q And isn't it true that Dr. Henke found in her study that product logos for all types of products were recognized by children?

A Yes. That was a follow-up to similar studies that had shown the high recognition for the Camel character among the very young and so this was researched trying to contradict research done by public health professionals that showed that that was comparable to the recognition of Mickey Mouse and similar characters, Ronald MacDonald.

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Q Is it your opinion, doctor, that the Joe Camel campaign was targeted to individuals under the age of 10 years old?

A No, but that it had an effect on them.

Q Okay. And isn't it true that under -- in Dr. Henke's study the 22 products she tested, that the Joe Camel ranked 12th on the list in terms of recognition?

A I don't recall, nor do I recall the methodology she employed to try and contradict the other research she had found that recognizes as well as Mickey Mouse.

Q And she found that the Chevrolet logo was recognized more than Joe Camel. Do you remember that?

A No, I don't and I find that suspicious.

Q And how about the Energizer Bunny? She found that that was recognized more than Joe Camel, as was Lite Beer and Budweiser? Does that surprise you?

A It Depends on the age group. I'm not so surprised by the Energizer Bunny, but the Lite Beer does surprise me. Again, it depends upon the age group and the methodology she employed. I'd be happy to review the research instrument if

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you'd like.

Q Well, that research has been out there for quite some time, hasn't it?

A Several years, yes.

Q Isn't it true, doctor, that cartoon characters are used to advertise numerous adult products?

A Yes.

Q And isn't it true that a cartoon style art in cigarette ads may also appeal to individuals over the age of 18?

A May.

Q It's not your position that the use of cartoon characters and cigarette advertising definitely reflects an intent to target minors, is it?

A No. It's just consistent with that, that it attempts to target minors. It's a good tool. When you are attempting to target minors, it's a good tool for that purpose.

Q And cartoon-style art is used for advertising products intended for adults?

A Yes. I think you just asked that. I agreed to that.

Q For example, in home installation?

A Yes.

Q That's the Pink Panther?

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A Yes. I think this has been asked and answered repeatedly in a number of depositions. You have this -- you have me on record for this -- on this point many times.
Q But you understand that we're doing this deposition for a purpose; that it compels me to ask these questions again. So it's not that I don't know your answer. It's just that I need to get them on the record for the purposes of this deposition. As an expert in advertising and marketing, are you aware of any other products intended for adults use that have cartoon characters in their advertising?
A Yes. We just mentioned one, the fibreglass installation products.
Q Other than that one --
A Yes.
Q -- I want you to list some.
A Snoopy the dog has been used to sell Metropolitan Life Insurance.
Q Any others?
A There have been a number of others over the years. Willy the Penguin was used to sell Kool cigarettes both in ads and in comic books. And, of course, the comic books I think would reach a

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more juvenile audience while the ads might be reaching the adults.
Q Are you aware of any other cartoon characters used for advertising of adult products?
A Yes. None -- I'm aware that it happens from time to time a number of occasions and it is also used for products that might be sold to the entire family, like Tony the Tiger for Sugar Frosted Flakes; that they try and reach an adult audience as well as as a youth audience.
Q Do you remember the speedy Alka-Seltzer ads?
A Yes.
Q Okay. Those used a cartoon character, didn't they?
A Yes.
Q And that was a product that was intended for use by adults, wasn't it?
A Yes.
Q Here's some other cartoon characters. Would you agree that these are cartoons: Garfield the cat for Embassy Suites Hotels?
A I don't recall that campaign. I know Garfield the cat, but I don't recall the Embassy Suite campaign.
Q No problem. Bugs Bunny for Holiday Inn Hotels?

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A Again, I'm certainly aware of Bugs Bunny, but not his use for promotion for hotels.
Q How about Mr. Clean the -- the household cleaning product? Do you consider that a cartoon?
A In some print versions it was rendered in cartoon format and indeed in some television versions there was an animated feature, but it was also done by a live actor on many occasions.
Q Okay. And then the Michelin Man for Michelin Tires, do you consider that a cartoon character?
A Yes. That's a cartoon trademark. It's been used for more than a century.
Q And tires are a product that you would consider to be a product for use by adults?
A Yes.
Q And the Jetsons for Sprint Cellular Network and Equipment?
A I'm not familiar with that campaign.
Q The Jetsons is a cartoon programme, isn't it?
A Yes.
Q Isn't it true that there are a lot of reasons why an advertiser would decide to use a cartoon character as part of its advertising campaign?
A Yes. Generally you want a trade character that's readily recognizable and memorable and gives the

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product an approachability, that is makes it seem friendly and likeable.
Q And the fact of the matter is that many adults like cartoons, don't they?
A Yes. I think there are adults that read the Sunday comics just like children do.
Q And there are certainly many other forms of cartoons other than comics, right?
A Yes.
Q As we discussed earlier?
A Yes.
MR. ESCHER: Let's take a five-minute break and then I can wrap up.
(PROCEEDINGS RESUMED PURSUANT TO A SHORT ADJOURNMENT)
MR. ESCHER: Okay. Dr. Pollay, I don't have any further questions for you. I thank you for your time.
(PROCEEDINGS RESUMED PURSUANT TO A SHORT ADJOURNMENT)
MR. DUNNE: Yes. This is Kevin Dunn. We had made a notice of production of documents and those documents have not been produced, but in response to some of the questions that I asked Dr. Pollay during my cross-examination, he has brought some materials with him and I believe Miss Chaber's going to be marking those as exhibits. I have not had the opportunity of doing a discovery

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deposition on those documents and I think we've agreed that after Miss Chaber does her redirect, whatever recross that's done, we will shut down the TV camera and I will be given an opportunity to take a discovery deposition on those documents to find out about them, which I appreciate. Thank you.

EXAMINATION BY MS. CHABER:

Q Dr. Pollay, yesterday at both Philip Morris, Lorillard, Brown & Williamson's attorney's request, did you go to your office and get some additional documents relating to youth targeting?

A I -- I produced those yesterday. I retrieved those the evening before.

Q And those documents were produced at their request yesterday while Philip Morris, for example, was still questioning you?

A That's correct.

MS. CHABER: Did Philip Morris ask you any questions about those documents?

MR. BARRON: Objection. Leading, trying to suggest a desire to answer, argumentative as to form, also trying to secure inappropriate opinion testimony.

THE WITNESS: Not that I recall.

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MS. CHABER:

Q Now, many days ago when we began this deposition, this testimony, and the attorneys for the plaintiffs were questioning you, you testified about Hill & Knowlton and how it was the advertising arm of the tobacco industry research committee; is that correct?

A Yes. Well, it did advertising and public relations both.

MS. CHABER: And I believe you characterized it as the biggest campaign -- PR campaign in history?

MR. ESCHER: Leading.

MR. BARRON: And suggestive of a desire to answer, mischaracterizing as to form, mischaracterizes prior testimony.

MS. CHABER: How big was the PR campaign of Hill & Knowlton compared to all other PR campaigns for an industry?

MR. ESCHER: Objection. Lack of foundation.

THE WITNESS: It's my understanding that it was unprecedented as to size. That is, it was a major effort with a very large staffing and a very focused way to do a lot of PR in a short period of time.

MS. CHABER: And was there a stated purpose or goal of the PR campaign as it was begun by Hill & Knowlton and

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carried on by them with respect to consumers?

MR. ESCHER: Objection. Lack of foundation.

MR. BARRON: I presume I don't have to add my voice to this. One objection suffices for all?

MS. CHABER: On this portion, yes.

MR. BARRON: Let me add if I could I think it's also leading and suggestive. I also think it is beyond the scope of the cross-examination and in terms of this line of questioning, I don't propose to continue to interrupt you on that basis, Miss Chaber, so I would offer to have you and I stipulate and other counsel stipulate that I have a continuing objection on the basis that you're now attempting apparently to create some testimony that has not yet been created by the previous plaintiff's lawyer or by any other lawyer during the cross-examination.

MS. CHABER: Well, I obviously can't agree to stipulate that that is a correct statement, but I will agree that you're making it as to the next series of questions, but I would appreciate it if you would indicate when that objection no longer applies.

MR. BARRON: I'll be happy to do that.

MS. CHABER:

Q Do you recall being asked on cross-examination by

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the cigarette company attorneys whether it was improper or unethical to conduct a public relations campaign?

A I do.

Q And is it improper or unethical just in general to conduct a public relations campaign?

A In general, no. It would depend upon what you're promoting, to whom you're promoting it, and how you're promoting it.

MR. ESCHER: If you had knowledge that a large percentage of the users of your product were getting ill and dying, do you believe it would be improper or unethical to conduct a public relations campaign encouraging or promoting use of that product?

MR. BARRON: Objection. First of all, it is argumentative. Second of all, it asks for an opinion that is not the proper subject-matter of expert opinion under evidence code section 801 and other sections and it's argumentative as to form.

THE WITNESS: In answer to your question, it would be absolutely unethical and improper.

MS. CHABER:

Q And am I correct that as part of your experience and training and publication and lecturing, that the subject of the ethics of public relations

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campaigns is something that you deal with as an expert?
A Yes. And more generally corporate policies and marketing ethics, ethics generally.
MS. CHABER: And you consider that within your expertise to evaluate the ethics of campaigns and marketing and advertising?
MR. ESCHER: Objection. Leading.
THE WITNESS: Yes. Certainly I have the ability to recognize the egregious examples such as this.
MS. CHABER:
Q And when you say egregious examples, what do you mean?
A The blatant uses of false and misleading reassurances to the public that it's suppression of information that's vital to the public health.
MS. CHABER: And is it your opinion, based on your knowledge, experience and training, that it is unethical to conduct a campaign such as you have described that falsely reassures or gives false health information?
MR. BARRON: Objection.
THE WITNESS: Absolutely.
MR. BARRON: Could you please hold your answer for a moment to allow us to get the objection on the record, Dr.

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Pollay?
THE WITNESS: I understood you had a standing objection.
MR. BARRON: No. I know. I don't suggest you did that intentionally.
MS. CHABER: Well -- and I don't think the standing objection applies anymore because we're on a different --
MR. BARRON: Well, let me clarify for your benefit and for his. The -- the standing objection dealt with a different category of inquiry. Perhaps it will be the argument, so I'm going to make it clear that we are objecting to this area as being an improper area for expert testimony and the other objections we had. If you want to have us have a continuing objection to this line of questioning, I'm certainly happy to accommodate you in that regard too, Miss Chaber and, you, Dr. Pollay.
MR. ESCHER: I wanted to add the objection that that question was leading as well.
MR. DUNNE: And I would like to add lack of foundation with respect to expertise in ethics.
THE WITNESS: I find all of this confusing since you were the ones who asked me the questions about whether it was proper and ethical.
MS. CHABER:
Q And I don't -- I think because the questions do

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deal with different things here and there, that it will be way too confusing to know whether you have some continuing objection that makes sense in light of these, so hard as it may be to edit this tape, I think you'll need to make your objections. But I would agree that the objections of one counsel would apply to all.
Doctor, in your opinion do the -- strike that. You were asked certain questions, most recently on cross-examination, about risk habits or risk potential of teenagers?
A Yes.
Q Do you recall that testimony?
A Yes. At some length.
Q And I believe that there were certain things like binge drinking and unprotected sex that were mentioned?
A Yes.
Q Do you believe that those risk behaviours are the same type of behaviour engaged in by teenagers smoking?
A No, I do not.
MR. ESCHER: Objection. Vague.
MS. CHABER:
Q And why not?

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A In several respects. They don't involve a packaged and promoted product in the same way that cigarettes do. They don't have the magnitude of risk that cigarettes do and they don't involve the addictive substances that cigarettes do.
Q Are you aware of any advertising that promotes binge drinking?
A I am not.
Q Are you aware of any public relations campaigns that promote binge drinking?
A No.
Q Are you aware of any advertising that promotes unprotected sex among teenagers?
A No.
Q Are you aware of any public relations campaigns that promote unprotected sex against -- amongst teenagers?
A No.
Q Do you believe it would be improper for a company to engage in advertising or public relations that promoted binge drinking?
A Yes.
MR. ESCHER: Objection. Lack of foundation.
MS. CHABER:

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Q Now, throughout the cross-examination of the cigarette company attorneys, there was reference made to their "independent advertising agencies". Do you recall that?
A I do.
Q In the context of advertising agency and a client, how independent is an advertising agency?
A Not at all.
MR. ESCHER: Objection. Lack of foundation. Vague.
MS. CHABER: Specifically with respect to the cigarette industry, how independent were their ad agencies?
MR. ESCHER: Same objection.
THE WITNESS: Not at all. For example, the Messina & Brown organization that did the cartoon Camel campaign, that was his only major account. It was entirely dependent upon the R.J. Reynolds Company for their fortunes.
MS. CHABER:
Q Do you believe, based on advertising practices, marketing practices, public relations practices, that an advertising agency could put out and promote a campaign of advertising without awareness of the company for whom they are working?

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A Not at all. Not only would they have awareness, they'd have approval of the company.
Q Now, you were asked questions about a paper put out by the tobacco industry called the "Scientific Perspective". What's the full title?
A "Scientific Perspective on the Cigarette Controversy".
MS. CHABER: And in your opinion, based on your knowledge, experience and training, what was the overall effect of that paper on the scientific controversy?
MR. DUNNE: Objection. Lack of foundation.
THE WITNESS: It was to give the public ultimately and specific members of the public, like newspaper editors, teachers and various schools and so on, a very distorted view of the nature of the controversy or the extent of the controversy.
MS. CHABER:
Q How do you know that that was the purpose?
A Well, I think you asked me about the effect.
MR. BARRON: Objection.
MS. CHABER: Excuse me. Let me ask you the same question about what the purpose of the scientific controversy is.

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MR. DUNNE: I object. Lack of foundation.
MR. BARRON: I object also on the basis that it calls for inappropriate opinion testimony under evidence code section 801 and other sections like that.
THE WITNESS: I think the -- the documents I've seen indicate that the purpose was precisely that; that is, to create a reassurance -- a means of reassuring the public, getting them to believe that there was no reason they should change their behaviour; that there was still insufficient evidence to draw any firm conclusion.
MS. CHABER:
Q Now, you yourself looked at this paper, this scientific perspective, and -- let me ask you a couple of preliminary questions. I believe the defendants -- or some of the counsel for the cigarette companies refer to it as a white paper?
A Yes. It's similarly referred to in some of the internal documents, particularly in the planning stage before it had its final title.
Q What is a white paper?
A White papers are a compendium of information, in this case used to try and exonerate the firm.
Q And the -- you were asked by counsel for I

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believe it was Philip Morris and Lorillard if you had the actual documents for which you reviewed to base your analysis of the "Scientific Perspective"?
A I was, and I was asked to retrieve those and did so.
Q And did you bring that?
A I did.
Q And to your knowledge were copies made yesterday and provided to all the defendants?
A They were.
Q You also wrote a working paper entitled "The Unscientific Perspective of the Tobacco Industry Research Committee"?
A I did.
Q And does that paper relate to both the white paper written by the tobacco companies and the documents referenced in that white paper?
A It does, and to only that document. That is, it analyses the materials used by the tobacco industry in that document that were published in the scientific literature.
Q And, likewise, was that brought --
A That was.
Q -- and distributed to the defendants?

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A That was available to them two days ago.
Q Okay. And I believe that the white paper is marked as plaintiff's Exhibit 11. Do you have that before you?
A I have a copy of it here in plaintiff's 14. The white paper itself, the scientific perspective?
Q No. Your working paper. Excuse me. I wasn't very clear.
A I do have a copy of my working paper. It's not the marked copy, but I have a copy.
Q Okay. I think I have the marked copy by mistake. And the documents that are referenced in the white paper that you were able to accumulate, those are marked as plaintiff's 17?
A Plaintiff's 14, I believe.
Q All that planning ahead of time and I still can't get it right.
A And what I have in the binder marked plaintiff's 14 is a copy of the original document from 1954, "The Scientific Perspective on the Cigarette Controversy", and then copies of all of the articles cited that could be retrieved from medical libraries.
Q And did you in fact make your best efforts to retrieve all of the articles that were cited in

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the tobacco company's white paper?
A I did, with the help of medical research librarians in a very large university-based medical school library.
Q And in Exhibit 11, which is your working paper on the topic, on table 1 did you make notations as to the availability of the document or other such notations as to where they're located or so forth?
A I did, including the identification of several which were unverifiable. That is, they were in fact private correspondence. Despite having been presented as scientific, they were not published in peer review journals and retrievable at this point in time.
Q And on table 2 in your chart did you analyse how many of the articles were not peer reviewed or unverifiable?
A I did. Table 2 presents a tally that indicates of the total number of articles which of those were not verifiable and then further which of those seem to be dealt with with some bias by TIRC.
Q Okay. And of the ones that were not peer reviewed or unverifiable, how many of the 20 fell

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into that category?
A There were 7 that were not peer reviewed or verifiable, so there were 13 that were -- were retrievable in peer-reviewed sources.
Q And I note you have a category called "true skeptic"?
A Yes.
Q And what did you mean by that?
A Where it seems appropriate, that is the way the -- their material is presented by TIRC seems fair because the authors themselves did indeed express the kind of doubts that they were portrayed as expressing.
Q And how many fell into that category?
A Six articles, three of which were by the same author, the same principal author.
Q And that same principal author was who?
A A gentleman by the name of Rigdon.
Q And did you have any information as to who funded Rigdon?
A No.
Q If you look at table 1, did you make some notation?
A I said not that I recall. Funded by the National Tobacco Tax Association. At least one of the

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articles in the article itself provided that information.
Q And then you had a category indicated "TIRC's report seemed biased"?
A Yes.
Q Now, what did you mean by that?
A That when I looked at the source material and what the industry had selected, that it seemed that they had been very selective in choosing only those passages that helped it create this disinformation campaign and it had omitted some conspicuously important information that it should have also shared with the public.
Q And you were asked yesterday if you were familiar with Dr. Hueper?
A Yes, I was.
Q Or, rather, who he was?
A I was asked questions about citation number 1 by Hueper, which is also repeated as citation number 11.
Q Do you believe in your opinion, based on your knowledge, skill and training, that Dr. Hueper's opinions were accurately reported in the cigarette company's white paper?
A I do not.

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Q And why is that?
A Because there were many things that he expressed in this very article that cited from -- where the passages are selected from that quite contradict the thrust of the chosen selection.
Q Can you give us an example?
A Yes. In Exhibit 1 of this document, we see several things, for example, an acknowledgement of the possible causal relationship between cigarette smoking and lung cancer, but also a recognition that it had little attention beyond the narrow circle of research workers; that the public was ill informed of this, another passage that says that there was a direct relationship. The quote is: "It seems plausible therefore to formulate the hypothesis that there is a direct relationship between cigarette smoking and cancer of the respiratory tract and that cigarette smoking may be a carcinogenic agent". He goes on to say that: "The prospects are frightening. It's frightening to speculate on the possible number of bronchogenic cancers that may develop as a result of tremendous numbers of cigarettes consumed in the two decades from 1930 and 1950". And he's absolutely clear that smoking is an

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important factor. Smoking is a factor and important factor in the production of carcinoma of the lung. The risk of developing carcinoma of the lung increases steadily as the amount of smoke increases.
Q And did he make a recommendation as to whether people should continue to smoke?
A He did. He said that stop -- stopping smoking was very important, to quote: "An effective control of cigarette smoking offers the means for a far reaching prevention of cancer of the lung".
Q And were any of the citations that you just -- rather, quotes from Dr. Hueper's that was referenced in the defendant's white paper, were any of them actually quoted there?
A None.
Q And was there another Dr. Hueper paper referenced in --
A It's not another paper. It's another selection from the same paper and, again, with no indication in that second citation of this contradictory information or attitude and opinion of Dr. Hueper.
Q And the citations in the cigarette company's

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white paper were their number 1 and number 11?
A That's correct.
Q And are there additional ones cited in your paper for the omissions made by the white paper with respect to statements by the authors that they quoted?
A There are. For each of the seven sources that seemed to be biased, we provided notes to indicate what was omitted.
Q Now, you were -- I think one of the citations in "The Scientific Perspective" is to Clarence Cook Little?
A Yes. Citation number 6.
Q And just to -- it's been a long time that we've been going. Just to refresh our memory, who was Clarence Cook Little?
A He was a eugenicist who had been running a rat lab in Maine and after his retirement age was enticed to come to New York and serve as the scientific director of the tobacco industry research committee starting in the summer of 1954.
Q Was he already the director of the scientific research committee when the cigarette company's white paper was published?

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A No. The white paper was published before there was a scientific director and before there was a scientific board assembled.
Q And were you able to verify Dr. Little's statements attributed to him?
A I was not. I believe it was as a personal communication or something. It was not in a peer reviewed published thing that could be verified.
Q And the actual personal communication wasn't attached to this scientific controversy paper by the cigarette companies, was it?
A It was not.
Q In respect to Clarence Cook Little, I think in response to questions by cigarette company defendants, you were asked what was sort of his specialty?
A Yes.
Q And what was that?
A Well, I say his background was in genetics and eugenics and in -- after a somewhat board of academic career when he left the University of Michigan under some questionable circumstances, he ended up running a private rat lab. There's an animal laboratory where animals were bred for research purposes.

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MR. DUNNE: I'm going to object. Mostly stricken, lack of foundation, nonresponsive.
MR. BARRON: And argumentative.
MS. CHABER:
Q What is eugenics?
A It's the belief that the population can be well served by selected breeding and discouraging population growth among certain segments of the population.
Q And is that different than genetics?
A Yes. So it's an expression of social policy preferences.
Q Now, I believe the attorney for Philip Morris indicated he was also the attorney for Lorillard?
A He did.
Q And that he was from the firm of Shook Hardy?
A Yes.
MR. BARRON: Objection. Hold on. You mischaracterized what I had said here and it's also leading and suggestive.
MS. CHABER: Counsel, at the very, very beginning of this deposition, as is required by the code of civil procedure in California and probably other states, all counsel were required to identify themselves and who they represent and where they

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are from. Are you familiar with Philip Morris and Lorillard having been identified as being represented by an attorney from Shook Hardy?
MR. BARRON: Hold your answer for a moment. What you say is not the law. I challenge you to cite a section that so requires anything like that, not that it makes much difference. But I do, I guess, get bothered when somebody points to the rules of law that I'm unfamiliar with because I don't think they exist. I'm also going to object to this line of questioning as being irrelevant and under evidence code section 352 something that should be inadmissible.
MS. CHABER: I certainly hope, counsel, that you're not disavowing your association with Shook Hardy & Bacon by any of those statements.
MR. BARRON: I'm not here to debate anything with you. I'm here to respond to what I believe are incorrect statements of procedural rules and make appropriate objections on the record.
MS. CHABER:
Q Do you know what the committee of counsel is?
A Yes.
Q What was it?
A It's the gathering for the collective action of

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the general counsel of all the tobacco firms.
MS. CHABER: And are you aware as to whether or not any members of the law firm of Shook, Hardy & Bacon were members of that committee of counsel?
MR. BARRON: Hold your answer, please. I'm going to object to this line of questioning as beyond the scope of direct or the cross-examination and in addition on whatever bases that I've already stated for the record.
MS. CHABER:
Q Well, I think you'll see the connection in a moment or two, counsel.
What -- do we have an answer?
A No. We did not have an answer. Yes, the Shook, Hardy firm was involved in this from the very outset. The elder Mr. Hardy from Kansas City was a principal in the formation of the defence strategies of the industry.
Q And what role did the committee of counsel play with respect to scientific research funded by the tobacco industry?
A They had a guiding hand in that.
MR. BARRON: Can I have a continuing objection to this?
MS. CHABER: No.
MR. BARRON: Okay. Well, then I object to the previous

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question on the bases that I've already stated -- actually, the one -- two questions back. And I object to the one that is pending on the similar bases as well as lack of foundation as well as it being argumentative.
MS. CHABER: What is the basis of your opinion with respect to the involvement of Shook, Hardy and lawyers in the committee of counsel?
MR. BARRON: Hold your answer, please. She's making me do this, doctor. Rather than have a continuing line of objections, I would rather obviously just agree that --
MS. CHABER: Well, if you stuck to the legal ones, it would have been over by now.
MR. BARRON: You know, you have a habit of wanting to argue with me. I don't want to argue with you. I just want to put a position on the record and offer again to have you stipulate to a continuing line of objections to this particular area you seem to have an interest in. If you don't want to do that, which you appear to not want to do, then I have to interrupt each question after it's completed before the answer's given and put my objections on the record, and I was just informing the witness here so he understood I

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wasn't trying to in any way throw him off in his responses. So the objections now are, first of all, relevancy, second of all, leading and suggestive, third of all, argumentative and most important of which I think is evidence code section 352.

THE WITNESS: The foundations for my understanding of this is my experience with the various documents of the TIRC and CTR and my understanding that many projects were shunted off into and called special projects to be particularly supervised by the committee of counsel.

MS. CHABER: And did you actually read, review, and rely upon documents of the nature you just described in forming your opinion?

MR. BARRON: Same objection and lack of foundation, leading and suggestive.

THE WITNESS: I have.

MS. CHABER: Now, there were claimed millions of dollars spent on research funded by the tobacco industry and I think that there were some different numbers that were floated by. Taking the highest number that was suggested by the attorneys representing the cigarette companies of money that they spent funding research on the cigarette smoking and

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disease, can you give us a perspective on how that amount of money relates to the money that those same defendants have spent on advertising?

MR. BARRON: Objection. Mischaracterizes previous questioning and answering, argumentative as phrased.

MR. ESCHER: Add the objections of lack of foundation and vagueness as to time.

THE WITNESS: The total spending over the 45 years of CTR has been asserted to be three to four hundred million dollars and various times, whichever figure one might take, the total still amounts to less than what is spent in one month in the current rate of spending for advertising and promotional activities, so that's 45 years versus one month.

MS. CHABER:

Q And have you read, reviewed, examined, and relied on any cigarette company documents discussing within the tobacco industry their own evaluation of the relevance of the work funded by them?

A I have.

MR. DUNNE: Objection.

MS. CHABER: And do you have an opinion, based on your review of these materials, as to what within the tobacco industry the view of the relevance of the -- of funding of research was by the tobacco industry?

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MR. DUNNE: Objection. Lack of foundation.

MR. BARRON: And improper opinion testimony under such things as evidence code section 801A and other sections.

THE WITNESS: I do have such an opinion. I think that opinion's very clearly expressed in the corporate documents.

MS. CHABER:

Q And what is that opinion?

A That --

MR. BARRON: Same objection.

THE WITNESS: -- the activity was engaged in for political litigation.

MR. BARRON: Hold your answer for a minute. We have another objection. The objection also is the -- the best evidence rule in light of his answer.

MR. DUNNE: And 801A.

MR. BARRON: And 801A.

THE WITNESS: That the activity was engaged in for litigation purposes. It has been used in the courtroom for political purposes to create doubt in the public mind, how not to get to the bottom-line answers on the tobacco and health questions. Indeed, much of the spending was deemed to be irrelevant to that central question of public health.

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MS. CHABER:

Q And in your review of the many documents both produced by the tobacco companies in litigation and legislative matters and so forth, have you reviewed, read and relied on any documents that evidence the primary purpose of the TIRC or the CTR?

A I have.

MS. CHABER: And in your opinion, based on the materials you've read, reviewed and relied on, what was the primary purpose?

MR. BARRON: Objection. Lack of foundation, inadmissible, inappropriate opinion testimony under sections such as evidence code section 801A and the best evidence rule.

THE WITNESS: To advance the public relations effort, which was a disinformation campaign designed to create doubt about the link between smoking and lung cancer, to help cultivate experts for use in litigation proceedings, to provide information that would be helpful in political lobbying and similar kinds of activities.

MS. CHABER:

Q And I would ask you to turn to Plaintiff's Exhibit 15, which I believe should be in front of

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you.
A Yes. I have it.
Q And to identify it for counsel so they can find it, it's a May 1st, 1972 memorandum from Fred Panzer to Horace R. Kornegay, subject: The Roper proposal?
A Yes.
MR. BARRON: I'm having trouble tracking your exhibits. Can you help us out and explain what you had marked and where we are and what you call 15? We don't have things that are marked with your stickers.
MS. CHABER: Well, I know. That's why I just described the document, counsel.
MR. BARRON: But where would we look? And I'm not sure I have the documents.
MS. CHABER: Well, I think there are additional --
THE WITNESS: I think these haven't been distributed. Those are the duplicates of these documents.
MS. CHABER: Oh, okay.
MR. BARRON: Do you want to just sort of give us a heads up, Madelyn, concerning how many exhibits you had marked, what numbers we're dealing with so we cannot slow the process down by being confused over here at this side of the table?
MS. CHABER: I think as I go along I'll be able to point you

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directly to the exhibit and I believe we marked up to 25, a number of which are documents and exhibits that were previously shown or reviewed and not looked at, but I will identify them, counsel.
MR. BARRON: Just for housekeeping purposes, the first one -- I mean the first new one that we're seeing here as a marked exhibit is number what?
MS. CHABER: 15.
MR. BARRON: There's no new earlier marked one, in other words a lower numbered one that you've premarked than 15?
MS. CHABER: There may be and I did my best to organize them in the order that I premarked them, but there may be something out of order and I will certainly clarify that as I go along. In fact, I -- in fact, I'll clarify it right now, counsel, because I thought it was offered and previously marked, and that was Exhibit 14 is the binder that you yourself asked Dr. Pollay to bring, which is -- and has been previously discussed as the documents that are referenced in the white paper on the cigarette controversy.
MR. BARRON: Well, I'm happy to have it. I'd like you to be a little more precise in your memory if you could.

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I think actually it was Mr. Dunne that asked you -- or asked him to bring 14, but we're happy to have it.
MS. CHABER: Well, I can't tell the difference between you guys.
MR. BARRON: 14 is the first one and then you've given us 15, 16 and 17; is that right?
MS. CHABER: At this point in time, yes, and we also referenced 11, but that had been marked at a previous session.
MR. BARRON: And your 14, the one you're calling 14 is the red binder that starts off with the first document being Scientific Perspective on the Cigarette Controversy?
MS. CHABER:
Q Yes. And has a series of tabs, the last tab being 22.
Now, if we could, Dr. Pollay, go back to Exhibit 15.
A Yes. I have it.
Q Is this a document that you have seen previously?
A It is.
Q And is it a document that you've read, reviewed and relied on in forming your opinions about the

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purposes of the TIRC and CTR?
A It is.
Q And can you point to what's -- any -- I'm sorry. Can you point to us in this document any specific statements which confirm the -- or form the basis of the opinion that you have expressed?
A Yes. In the middle of the document first page, it describes the three-prong nature of their strategy which they thought was brilliantly conceived and executed. The very first prong is creating doubt about the health charge.
MR. BARRON: I'm sorry. Excuse me. Excuse me. The answer was yes. When he went on to point things out, I know he didn't -- not intentionally, but then I got confused about what was being done. We need to insert an objection that, number one, the best evidence rule and, number two, the admissible expert opinion is now being provided at least in response to what I thought was a question that was more simple than the one that he's now apparently answering.
MS. CHABER: You can and will you point out the portions of this document that support and confirm the opinion you expressed?
MR. BARRON: And now we have to insert the objection that this

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constitutes, number one, inadmissible expert opinion under Section 801A and other sections of the California Evidence Code and it violates the best evidence rule.

THE WITNESS: This document sort of lays bare the basic nature of the strategy identifying both three key target areas of influence and three means of -- that constituted the kind of cornerstone elements to their strategy.

MS. CHABER:

Q Let me ask you that. What were the targets?

A The three major fronts --

MR. BARRON: Hold it. Hold it. Excuse me. Doctor, I hate to do this, but she will not allow a continuing objection, as we all recognize on the record so far, so she's asked me to -- and others to insert an objection before every answer. I hate to interrupt your responses that way, but we need to. So, again --

MS. CHABER: Counsel -- do me a favour, counsel. Since I'm not going to, you don't need to make that statement each time and your objection will go faster.

MR. BARRON: As I was about to say, the objections therefore need to be made, which are that it constitutes

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inadmissible opinion testimony and I think it may be, depending on your answer, violating the best evidence rule.

MR. DUNNE: It also goes beyond the scope of my cross.

MR. BARRON: Well, we I think had a continuing objection to that earlier on the Hill & Knowlton documents. That's my recollection. But I agree with you it does that also.

THE WITNESS: The domains that seemed to be most important to the public relations campaign were the litigation front, the political front and public opinion front.

MS. CHABER: And the strategy, what were the three prongs of it?

MR. BARRON: Objection.

THE WITNESS: The first prong --

MR. BARRON: Excuse me. I have to state the grounds. Objection. Inadmissible, expert opinion, lack of foundation. Potentially the answer will violate the best evidence rule.

THE WITNESS: The first grounds -- the first means, rather, was creating doubt about the health charge without going so far as to actually denying it, of course, because that wouldn't be defendable. The evidence wouldn't have supported that.

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Advocating the public's right to smoke and encouraging scientific research.

MS. CHABER:

Q And with respect to opinions expressed earlier on consumer expectation and what consumers were aware of, does this document address whether or not as of its date, 1972, the public, particularly heavy smokers, whether they understand and believe in the evidence being presented on a cigarette controversy?

A It does.

MR. BARRON: Objection.

MS. CHABER: And in your --

MR. BARRON: Excuse me. You I thought indicated that you would allow me to state the grounds for the objection. If you don't want me to state the grounds, I think the Court's going to say that any ground that I could have stated would be the basis of the objection. And so do you want me to state the grounds, Miss Chaber, or not?

MS. CHABER: Follow the rules, counsel.

MR. BARRON: Okay. Again, I'm sorry, doctor, to interrupt this way, but the objection again is that it is inadmissible opinion under various evidence code sections dealing with opinions by experts and it

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potentially violates the best evidence rule and, of course, we have a continuing objection that it's beyond the scope of any examination or direct or cross that's occurred so far.

MR. DUNNE: And the document speaks for itself.

MS. CHABER: And do you have a code section for the document speaks for itself, counsel?

MR. DUNNE: Not right now.

MS. CHABER: I'll tell you what I will agree to, counsel. I will agree that you can say same objection if it's the same objection that you've been making each time. Obviously if you have an additional ground, add the additional ground. That might shorten the objection period.

And are there other references as to what public opinion surveys talked about in 1970 as to whether or not the majority of people believed that cigarette smoking was only one of the many causes of smoke -- smokers having more illnesses?

MR. BARRON: Excuse me. Dr. Pollay, you can probably anticipate that I need to do this each time that she's calling for opinion of the type that she has been, so if you'd just allow me to do that, it will speed the process up. I'm going to

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accept her willingness now to have me just say same objection, same grounds and I'll do that, which will then hopefully not district you any more than we have to. But if you could just pause a second so we can make an appropriate record, I think everyone, including the Court and whoever uses this video will be appreciative eventually. So same objection, same grounds.

THE WITNESS: Yes. It indicates that their own research indicated even in 1970 that the majority of smokers believe that cigarettes are only one of many causes of illness of the -- more precisely the fact that smokers might have more illness than nonsmokers.

MS. CHABER:

Q And was Dr. Clarence Cook Little -- once he became the scientific director of the TIRC, did he have a particular hypothesis about why people got illness?

A He did. It was called the constitutional hypothesis.

MS. CHABER: And do you believe that the consumer expectation in 1970, even among those people who believed that smoking might be only one of the many causes of cancer, as to whether or not the consumer

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expectation was that they accepted this constitutional hypothesis as the explanation?

MR. DUNNE: I object. Lack of foundation.

MR. BARRON: And same objections that I had previously made on the same grounds in addition.

MS. CHABER: And I should probably add as to why smokers might become ill.

MR. ESCHER: I have an objection too. I think it's leading and also vague. I think it actually will be helpful to read the question back to the witness. It's a pretty long question. If you hear it, I think you'll agree with me.

MS. CHABER: I sometimes do.

THE WITNESS: I seem to be getting more help than I need.

MS. CHABER: I don't think it's you they're trying to help. I think it's me.

(LAST QUESTION READ BACK)

THE WITNESS: Yes. It's my opinion that many people felt that there was certain types of people that might be decease prone as a result of smoking and that most people didn't feel that they themselves fell within that group.

MS. CHABER: And there was much made about how much research and how much money was spent on research by the tobacco industry. Do you have an opinion as to

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whether all the research that they funded was favourable to their point of view; that is, that cigarette smoking was not a cause?

MR. BARRON: Objection. The preamble, in my view, was clearly argumentative as phrased. In addition, there is a foundational objection and then there is the series of other objections that were made on the same grounds.

THE WITNESS: I do have such an opinion, yes.

MS. CHABER: And what is your opinion?

MR. BARRON: Hold it, please. We have to do this. She's requiring it again, doctor. Same objection, same grounds.

THE WITNESS: That both -- some of the specific studies and some of the authors funded accepted that lung cancer was caused by smoking and had results that were published that indicated that.

MS. CHABER:

Q Are you aware of any public relations campaign, advertising or otherwise dissemination by the tobacco industry, of those research projects that had a viewpoint unfavourable to the tobacco industry?

A None whatsoever.

Q And are there documents that you have read,

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reviewed, and relied on for forming that opinion?

A Yes.

Q Does this document fall into that category?

A Yes.

Q And what about this document makes it fall into that category?

A I forget now. This is one of the several documents that was assembled around this theme.

Q I direct your attention to number 3 and number 5?

A Yes. As I say, number 5, the selection of favourable results. If results are favourable we'll release them as a book in hard cover and, of course, the -- that's selectivity suggesting that unfavourable results would be ignored.

Q And, likewise, does number 3 under scenario for action --

A Yes. Again, it says --

Q -- indicate that?

A That results if favourable --

MR. BARRON: Excuse me, doctor. I think, again, if you hear me start to talk, if you would just allow me to put this on the video and the record, I'd appreciate it. His previous answer included something that was I think nonresponsive,

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argumentative, and violated the evidence code sections dealing with expert opinion, including lack of foundation.

MR. DUNNE: And speculative.

MR. BARRON: And this question clearly contains those problems with it, so I will repeat. Same objection, same grounds.

THE WITNESS: Item 3 indicates that the results if favourable would be presented to various members of government, up to and including the White House.

MS. CHABER:

Q Now, we've also marked and offer Plaintiff's Exhibit 16 dated December 8th, 1970, subject-matter: Best programme for CTR from H. Wakeham to Mr. J.F. Cullman III.

A Yes. Both employees of Philip Morris.

Q And was Mr. Cullman just some low-level employee?

A No, no. He was the CEO at one stage. I don't recall. I believe he was at the very senior executive office as of 1970. In fact, I'm sure he did. He was the one who testified before a U.S. Congress at this time.

Q And Mr. Wakeham -- or is it Dr. Wakeham?

A Yes. Helmut Wakeham I believe at this time was

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the head of the research department. He's a research director for Philip Morris.

Q And is this a document that you've read, reviewed, and relied on for your opinions?

A Yes.

Q And is this a document that discusses the stated objective or purpose of CTR?

A It does.

MR. BARRON: Can you hold your answer for a minute? It's not clear whether this would fall within this Hill & Knowlton continuing objection that we've had as to beyond the scope of the direct and cross-examination. Do you agree that that's what this is so I need not make that objection or do you want me to start making that objection in this series?

MS. CHABER: I don't know. I'm so confused, counsel. If your objection is beyond the scope, just include that in the continuing objection that you're making each time.

MR. BARRON: That's what I want to make sure that we agree on then. And then it would be a continuing objection on that grounds and then we have the other grounds, which I've I think repeated a few times, which would be lack of foundation,

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inappropriate expert opinion, and the best evidence rule. And so we will have all those bundled into the same objection, same grounds for this series of questions.

MS. CHABER:

Q You were asked some questions about a statement made by the American Medical Association or something to the effect that warnings would be unnecessary?

A Yes.

Q You recall those --

A I do. That was in 1964 after the release of the surgeon general's report and when congress was considering warnings.

Q Do you have any knowledge as to whether or not the AMA was provided any money by the tobacco industry?

A Yes. They were given $10 million.

Q And do you know with respect to timing when that funding was in relation to the statement quoted by defendants?

A I don't recall now whether it just preceded it or just followed it, but it was very close in time.

Q I'd like to turn to the issue of youth targeting. There was a lot of time spent on

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cross-examination on this topic; is that correct?

A Yes.

Q And did you at the request of counsel for the tobacco defendants, whichever one it was, go by your office and pull out any additional documents that indicated that Philip Morris was targeting minors?

A Yes, I did.

Q And is that the document that's been marked as 18?

A Yes. I'll check the marking number. It was another binder. This is marked as 23.

Q Well, let me tell you what 18 is and hope that you have it in front of you.

A Okay.

Q It's a September 3rd, 1987 interoffice correspondence on Philip Morris USA letterhead from Myron Johnston to Dr. Jon Zolar?

A Oh, yes. I've got it here. Yes.

MS. CHABER: -- regarding --

MR. BARRON: Can you hold for a second, please?

MS. CHABER: Can I -- I'm just identifying the document, counsel.

MR. BARRON: I know, but just can you hold it and listen to me

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for a second? I think we can shorten this up and help you in that we don't have this before us and as you wanted to see documents that were being discussed when we were questioning the witness, we would like --

THE WITNESS: You do have it before you. It's part of a compilation in the binder that you asked me to produce yesterday.

MR. BARRON: Okay. Well, that's what we're trying to find out. It hasn't been marked and so I asked earlier, if you remember, if you have a heads up at where we were going past these we were provided and numbered 15 through --

THE WITNESS: It's the very last item in here.

MS. CHABER: It was marked as a separate document in addition. It is the last document within 23.

THE WITNESS: 23. That's correct.

MS. CHABER: Within 23. Which is another binder that was provided to you that Dr. Dr. Pollay produced at the request of defence counsel.

MR. BARRON: Okay. So let us try to find it so we can track with the questioning here.

MS. CHABER: Yesterday we gave a whole stack.

THE WITNESS: It's the very last two pages in that binder.

MR. BARRON: I don't question that it's here somewhere. Now

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we just need to locate it, that's all. We couldn't do it unless you helped us in describing where it is. Okay. September 3, 1987?

THE WITNESS: Yes.

MS. CHABER: Okay.

MR. BARRON: And that's now what you're also calling 18 or if we could just call it part of 23, Madelyn.

MS. CHABER:

Q Well, I marked it separately so that we wouldn't have to go searching through a whole volume, but it is part of 23, which was produced in response to your request that Dr. Pollay go back to his office and pull some additional documents.

Dr. Pollay, is Exhibit 18 part of the documents upon which you have read, reviewed, and rely in forming your opinion that tobacco industry targeted youth?

A It is.

Q And what about this document confirms or supports that opinion?

A It's a discussion of the impact of taxes that led to price increases and how the increased price cause a change in the number of teenagers smoking and talks about those who are currently 18-to-21-year-olds and how few they are and it's

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talking about this price increase effect over the last five years. So it's -- in retrospect it's talking about the failure to get 13-to-15-year-olds -- this should be 13-to-16-year-olds into the smoking habit.

MR. BARRON: We move to strike in light of his answer, which obviously I couldn't totally anticipate. The answer, in my view, violates the evidence code sections dealing with admissible expert opinions and also there's lack of foundation for that testimony and it violates the best evidence rule.

MS. CHABER:

Q Doctor, is this one of the many, many, many documents you have reviewed relating to youth targeting by the tobacco industry?

A It is.

MS. CHABER: And does this document express concern that what happened in 1982 when the price increased not happen again?

MR. BARRON: Objection. Same -- same objections, same grounds.

MR. ESCHER: I would also like to add the objection is leading and that the document speaks for itself.

THE WITNESS: It expresses a quite intense concern. It

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indicates that we don't want that to happen again, that being the fact that there had been a reduction in the uptake of smoking among 13-to-16-years-olds.

MS. CHABER:

Q And had there, likewise, been notations that many adults had quit smoking as a result of the price increases?

A That's correct.

Q Now, Exhibit 23, can you just describe generally what it is?

A Yes. I was asked to retrieve, as I could, on the -- in the evening hours additional documents regarding Philip Morris. These are some additional documents regarding Philip Morris and, in addition, a few of the kind of source materials that I relied upon to provide me leads to Philip Morris documents as have been published in some cases in peer review journals and other cases by members of the US Congress.

Q And, doctor, we have attached as Exhibit 19 a working paper and research reprint working paper 98.4. Is this, likewise, a document that was asked to be produced --

A It is.

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Q -- by the defendants?
A It is.
Q And what is the title of that working paper?
A The title of this working paper is "Exhibited and Exposed: Annotations to documents discussed in MINNESOTA, et al, PLAINTIFFS V. PHILIP MORRIS, et al, DEFENDANTS, that is the State of Minnesota in this case against the tobacco industry.
MR. DUNNE: What exhibit is that? I'm sorry.
MS. CHABER:
Q It is Exhibit 19. And can you generally describe what this document is and how it is laid out?
A Yes. It's a set of annotations to the nature of the exhibits used in the direct examination and in cross-examination both and particularly with the -- for the experts talking about consumer behaviour and advertising activities, the evidence of Professor Perry of the University of Minnesota and Professor Dolan of Harvard in particular.
Q Now, in writing this paper and in looking at these exhibits and documents, did you limit yourself to only look at what had been presented by the plaintiffs in that trial?
A No. This includes the cross-examination

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documents as well.
MS. CHABER: And, doctor, in your review of the materials, the documents, trial materials, materials from Congress and other such bodies, have you ever seen any documents by the defendants expressing disapproval or dismay at any of the documents identified to date as targeting 14-to-17-year-olds as the market for cigarettes?
MR. BARRON: Objection. Relevance as to what he has seen or not seen and, second of all, it is vague and ambiguous and argumentative as well.
MR. DUNNE: It's overly broad.
THE WITNESS: I have not seen any written disavowal.
MS. CHABER:
Q And you have -- this isn't the first time you've been cross-examined by attorneys representing cigarette companies?
A No, it's not by any means.
MS. CHABER: And have any of them ever in any of their cross-examinations presented to you any documents evidencing the marketing plan and instructions to advertising agencies?
MR. BARRON: Objection. Relevance, argumentative, and vague and ambiguous.
THE WITNESS: No, they have not.

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MR. ESCHER: I didn't catch the answer.
THE WITNESS: No, they have not, not that I recall.
MS. CHABER: And I think we need to go off the tape because of time.
(PROCEEDINGS RESUMED PURSUANT TO A SHORT ADJOURNMENT)
MS. CHABER:
Q Dr. Pollay, we've marked as Exhibit -- Plaintiff's Exhibit 24 another of your working papers called "Stop and Think. Consider This Before You Develop Retail Cigarette Warnings"?
A Yes, we did.
Q And did you produce that again at the request of counsel for the tobacco companies to bring to this deposition?
A I did, and it's an older paper. It was published originally in 1994. It was something that's been produced in previous proceedings as well.
MR. BARRON: Is that this one here? You said 24?
MS. CHABER: Stop and Think.
MR. BARRON: Okay.
MS. CHABER:
Q You were asked, Dr. Pollay, about a number of cartoon characters advertising products other than cigarettes?
A Yes.

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Q And I think some of the examples given were the Energizer Bunny and the Pink Panther, things like that?
A Yes.
Q Are you aware of any of the cartoon characters discussed in your cross-examination by the cigarette attorneys that are advertising a product that would be harmful to the health of the consumer?
A I'm not.
Q Are you aware of any of those cartoon advertising images referenced by the attorneys for the cigarette companies advertising a product that is addictive to its users?
A No.
MR. BARRON: Objection. Hold your answer, please. The preamble is argumentative and talks about the cigarette attorneys in the plural and the questioning came from one attorney dealing with a serious of cartoons relating to his particular client, so the question as phrased is, number one, mischaracterizing what occurred and, number two, argumentative as phrased.
MS. CHABER:
Q With that correction that I believe it was only

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the R.J. Reynolds counsel that mentioned the Energizer Bunny and the Pink Panther and such, are you aware of any of the -- those cartoon images advertising a product which can addict its users?

A No.

Q There was some discussion yesterday about a fuzzy distinction between drawings and cartoons. You recall that testimony?

A Yes.

Q Do you believe that Joe Camel falls into that fuzzy area?

A No. I think Joe Camel is clearly a cartoon.

Q Do you think that the Flintstones fall into a fuzzy area between a drawing and a cartoon?

A No. I think the Flintstones are clearly a cartoon.

MS. CHABER: Doctor, your -- you have expressed an opinion -- strike that. Doctor, if the targeting of minors is deemed to be an illegal activity, do you think that it is reliable to rely on the cigarette companies to explicitly in writing in their marketing plans or the other type of documents referenced yesterday say that they are targeting minors?

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MR. BARRON: Objection. First of all, it is argumentative as phrased. Second of all, it constitutes an attempt to elicit inadmissible inappropriate expert testimony.

THE WITNESS: I do not.

MS. CHABER:

Q Doctor, there was a number of ads that were referenced yesterday which I believe have not yet been identified and attached as exhibits to this deposition and I would offer them now. The Camel poster, could you just hold that up so we're all clear of what that is?

A I think you referred to this large format --

Q Yes.

A -- wall poster --

Q Yes.

A -- for the Joe Camel.

Q Yes. I believe that -- is it fair to say we spent a fair amount of time -- or you've spent a fair amount of time being questioned on that?

A That's true.

Q And we've marked that as Exhibit 21 and, actually, we're reserving that exhibit number to substitute a copy that will fit into exhibit format. In addition, doctor, there were, I

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believe, four other Camel advertisements that you produced yesterday?

A Yes. These other four are not poster forms but magazine forms, although some are still large because they are originally two pages in a magazine. So yes, there are four of those examples.

MS. CHABER: Okay. And --

MR. ESCHER: Excuse me. I'm going to object to this. I don't think I asked him questions about those particular four items and I think that I'm going to object on the basis that this is beyond the scope of the cross-examination.

MS. CHABER:

Q And I believe that there was specific reference to a number of them. Do you have that recollection, doctor?

A There was substantial discussion. They were on camera, each one visible to the jury.

MS. CHABER: And I have reserved Exhibits 22 A, B, C, and D, for copies of those to be made available.

Dr. Pollay, are you the only scholar of advertising and promotion and marketing of the opinion that the cigarette companies target minors?

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MR. BARRON: Objection. Number one, relevancy, number two, an attempt to inappropriately develop hearsay testimony.

THE WITNESS: Absolutely not.

MS. CHABER: Is there a body of authoritative work that expresses the opinion that cigarette companies target minors?

MR. BARRON: Objection. Same grounds.

MR. DUNNE: And overly broad.

THE WITNESS: Yes, there is.

MS. CHABER: And I think you've mentioned certain authors previously that -- the one that comes to mind is Dr. Pierce; is that correct?

MR. BARRON: Objection. Relevancy and same other grounds.

MR. ESCHER: Also vague.

MS. CHABER:

Q Are there authors that you consider to be authoritative in the field of determining the targeting of minors by cigarette companies?

A Yes. There are many.

Q And can you name any?

A People like Dr. Pierce, Dr. Michael Cummings. Stanton Glantz knows a lot about it, Professor Dolan at Harvard, Dean Krugman, head of the advertising department at the University of

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Georgia. There's quite a substantial list.
Q And you were questioned about the -- I believe it was the 1994 surgeon general's report?
A Yes.
Q And is that a surgeon general's report of which you made any contributions?
A Yes. I drafted a considerable portion of Chapter 5, the chapter on advertising.
Q And do you consider the surgeon general's report on advertising to be an authoritative work?
A I do.
Q Yesterday you were questioned about various documents of R.J. Reynolds tracking 14-to-17-year-olds. Do you recall that?
A I do.
Q And I believe previously to that you were questioned by Philip Morris with respect to under 18 smokers as well?
A Yes.
Q Have you ever seen any documents which express disapproval or dismay at the -- those documents that have been produced here at this deposition?
A I have not.
MS. CHABER: In all of the cross-examinations and the trials that you have been involved in, has any defence

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lawyer presented you with a document, a letter, a response to those documents indicating the tracking of 14-to-17-year-olds and minors that disapproved or responded and said, you know, what, are you crazy; we don't do this?
MR. BARRON: Objection. Relevance, argumentative, improper subject of testimony under Section 352.
THE WITNESS: I've seen no such document.
MS. CHABER:
Q You were asked a whole series of questions by counsel for R.J. Reynolds about peer influence and youths smoking?
A Yes.
Q Is that an item that can be peer influenced? That is, is that an item that can be separated from the effect of advertising?
A No, because that's one of the major effects of advertising, is to influence how a cohort or a group of similar age people perceive the products and what ultimately ends up being perceived by them as an in product or a masculine product or a cool product.
Q Doctor, are you familiar with what is the -- or what are the two leading brands amongst teenagers under the age of 18?

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A Yes.
Q And what is that?
A The three leading brands are Marlboro, Newport, and Camel.
MS. CHABER: And do you believe that those -- the fact of the popularity of those brands among minors is a coincidence?
MR. BARRON: Objection.
THE WITNESS: No. It's directly traceable to the magnitude of advertising spending.
MR. BARRON: Excuse me. I guess the Court will allow me any basis since he talked over my attempt to set forth the grounds.
MS. CHABER: Set forth the grounds and I'll ask him again and he'll respond again.
MR. ESCHER: Well, I'll object to vagueness of the term coincidence. You don't need to ask the question again as far as I'm concerned.
MS. CHABER: Okay. Thank you. You may interpose that objection.
MR. ESCHER: Thank you.
MS. CHABER:
Q By the way, doctor, do you believe the word coincidence is subject to the good old English definition?

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A I do.
Q And what does it mean?
A The two things co-occurring, that is occurring at much the same time and having a relationship.
Q Doctor -- and I don't mean to unfairly characterize this, so counsel can correct me on this, but I think that we spent a fair amount of time yesterday with you being cross-examined on the sexual suggestiveness of certain body parts as it related to certain cigarette advertising?
A Yes.
MS. CHABER: Were those opinions that you expressed -- is that solely your opinion or is there some basis in the scientific research supporting that?
MR. ESCHER: Objection. Vague.
THE WITNESS: It's not solely my opinion, but the support for it occurs more in the trade press, that is the editorial positions taken by major trade -- advertising trade magazines like Advertising Age and by other columnists of advertising working out of New York.
MS. CHABER:
Q Have you ever seen any responses by the cigarette company to any of these editorials claiming that the suggestions of human body parts of a sexual

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nature was not correct?
A Not that I recall.
Q Now, you were also asked about whether or not you reviewed testimony of various tobacco company executives and employees?
A Yes.
Q You recall that testimony? And you were asked if it wouldn't be important to you to be able to see that and view the credibility of those employees and executives of the tobacco companies?
A Yes.
MR. BARRON: Sorry. I missed the question. Could I just have it re-read?
(LAST QUESTION READ BACK)
MR. BARRON: Oh, good. Thank you. That's fine.
MS. CHABER:
Q You recall that?
A I do recall that.
Q And have you had any occasion at all to view the credibility of any tobacco executives and form opinions as to that credibility?
A I have.
Q And can you tell us about that?
A Yes. I saw the -- the CEO's of the major companies lie to a congressional committee.

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MR. DUNNE: Object. Move to strike, nonresponsive, argumentative.
MR. BARRON: Lack of foundation and inappropriate opinion testimony.
MS. CHABER:
Q Let me ask you first have you seen and witnessed the testimony under oath of tobacco executives before Congress?
A I have.
Q And did you form opinions about the credibility of those executives?
A I did.
MS. CHABER: And what were your opinions?
MR. DUNNE: I object. Lack of foundation, goes beyond the scope of the cross, inappropriate opinion testimony.
THE WITNESS: The statements they were making under oath to Congress were in direct contradiction to the documents I've seen internal to the organization, so I judged them to be lying and I judged them to be not credible.
MS. CHABER:
Q And as a result of that opinion, have you felt it necessary or beneficial to seek out other testimony of other tobacco employees as framed by

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defence counsel to view their credibility?
A I have not felt it necessary.
Q You were asked a lot of questions about polls. I only want to ask you just a couple. You're familiar with various polling data?
A Yes.
Q Is it an appropriate use of polling data to examine only one question out of a poll?
A No. Absolutely not.
Q Why not?
A Because it's necessary to look at a series of related questions in order to more fully understand both the context of the questioning and the nature of the responses and the meaning of the responses that respondents are providing.
Q And why is that?
A Because it's too easy to take an individual item out of context and not appreciate what was in the respondents' minds when applying.
MS. CHABER: Do the questions that are asked prior to a question have any effect on responses?
MR. ESCHER: Objection. Vague, lack of foundation.
THE WITNESS: Yes. They can have substantial effect.
MS. CHABER:
Q In addition to the Camel ads that we have marked,

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have you brought additional Marlboro brand images?
A I have. I was asked to produce working paper 99.1, which is entitled "Marlboro Brand Imagery, a Collection of Advertising Examples".
Q And did you produce that document?
A I did, and it's been duplicated.
Q And it has been provided to defence counsel yesterday?
A Yes.
MS. CHABER: And we've marked that as 20 and I would offer that now.
MR. BARRON: I'm going to reserve objection on that. Although it was provided yesterday, it should have been provided at the commencement of the deposition in light of not only the earlier testimony that was given, the obligations under civil code of procedure Section 2034 and others, but I have not personally, Madelyn, had time to look through all of it yet, so I do reserve objection. It may be just fine, but I cannot agree with it going in at this time without reviewing them further.
MS. CHABER: Must have had a good dinner instead of doing any work.
MR. BARRON: Actually, the doctor and I compared notes. We

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both went for a late dinner, had Friday night off, and we started early.

MS. CHABER:

Q Of course, he wrote the documents and produced them and knows what's in them.

Doctor, you were looking at and interpreting documents over the course of fourteen and a half hours of cross-examination and I believe some six hours of direct examination, correct?

A Yes.

MR. BARRON: I'm sorry. I missed the question. Could I have it reread? I just didn't hear it.

(LAST QUESTION READ BACK)

MS. CHABER: It's a preliminary counsel, question.

MR. DUNNE: I'm not sure the number's right.

MS. CHABER: Well, if the number is incorrect, counsel, I'll agree to clarify it at the time of trial, but we kept an account and unless Greg doesn't know how to add --

MR. BARRON: My surprise --

MS. CHABER: Make your objection. Let's go on.

MR. BARRON: I guess I'll just have to place the objection on relevancy. I don't understand the purpose of it. I hope you're not going to suggest that in any way his answers haven't been from his

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standpoint accurate because, of course, we offer everybody plenty of time to take breaks or recesses.

MS. CHABER: Let me ask my next question, counsel, and then you won't have to worry about that.

MR. BARRON: That's why I said I don't know that I need to make the relevancy objection, but I guess I'd better make it.

MS. CHABER:

Q During the course of the cross-examination you were asked if many of these documents had ordinary English language in them. Do you recall that questioning?

A Yes.

Q Doctor, why -- what do you believe is your expertise over and above an ordinary juror in interpreting these documents?

A Well, there may be several. Certainly there's marketing terminology --

MR. BARRON: Doctor, can you hold for a second? Just a moment. What I need to do is make an objection that as you now have phrased it it's too general and, honest to goodness, I wouldn't have any idea what documents over these 14 hours he has in mind or you have in mind when he starts to give his

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answer.

MS. CHABER: I believe I addressed that he was asked this on cross-examination, so it's easy enough to find out.

MR. BARRON: Well, I do believe the question as phrased, however, is too general and does not permit a meaningful answer and therefore is objectionable on that ground because I, honest to goodness, wouldn't have any idea of what documents he's talking about or bundle of documents.

MS. CHABER: It's your questioning, counsel. I would hope you'd have some idea.

MR. BARRON: Well, that narrows it down somewhat, but, frankly, not enough to be of real meaning to me, so I need to make that objection, Madelyn, in fairness, but you can obviously pose them however you like.

MS. CHABER:

Q Do you need the question read back?

A I do. I think expertise is both helpful and I think in many cases necessary because it offers an understanding of some of the trade terminology that might not be familiar to the general public, understandings of the typical structures and conduct of the firms, the ways in which work

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product of these firms is processed, relationships between corporations and ad agencies and an understanding of the context in which these documents are occurring.

Q Doctor, I believe you also produced, again at the request of counsel for the cigarette companies, another working paper entitled "How Cigarette Advertising Works: Rich Imagery and Poor Information". I believe it's working paper 98.6; is that correct?

A Yes.

Q That's been marked as 25, counsel. Now, did you in this paper and in your experience, training, teaching, writing look at issues of the effect on consumer expectations of advertising and marketing and promotion?

A Yes.

MR. BARRON: Objection. Compound, vague and ambiguous as phrased, calls for a narrative.

MS. CHABER:

Q Did you look at each one of those items?

A Yes.

Q Did you -- have you made any determinations as to the sophistication or naivete of the consumer with respect to health hazards of cigarette

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smoking?
A Consumers are generally naive.
MS. CHABER: And why do you say that?
MR. BARRON: Excuse me. The answer would have been yes or no. He provided something beyond that, so I was not able to get an objection in. Obviously the answer that followed that I move to strike on the basis that it constitutes inadmissible expert opinion. There's lack of foundation for it and it's argumentative as bundled in your question and that response.
MS. CHABER:
Q I take it your answer was yes?
A My answer was yes.
MS. CHABER: And what is your opinion as to the sophistication or naivete of consumers with respect to the health hazards of smoking?
MR. BARRON: Same objection, same grounds.
THE WITNESS: Consumers are naive about cigarettes as a product and the consequences of their use.
MS. CHABER:
Q And do you believe that the cigarette industry has in any way made an attempt outside advertising or promotional activities to inform consumers of the extent of health hazards of

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cigarette smoking?
A They have not.
MR. DUNNE: I object. I'm sorry. I thought my co-counsel was going to.
MS. CHABER: Sleeping on the job, Kevin.
MR. DUNNE: Object. Overly broad, vague and ambiguous, lack of foundation, lack of qualifications.
MR. BARRON: I would object on the same grounds, same basis.
MS. CHABER: Do you believe that consumers are kept informed by the cigarette industry as to health risks to which its regular customers are exposed by smoking cigarettes?
MR. BARRON: Objection. Same ground or grounds.
THE WITNESS: Absolutely not.
MR. DUNNE: And relevancy.
MS. CHABER:
Q Are there means other than advertising and promotion to inform consumers?
A Certainly.
Q And can you give us some examples?
A There could be informative packaging or inserts in packaging. There could be materials of an informative nature distributed through schools or given to newspaper editors who might republish them in the public interest. There could be

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countertop information just provided at retail vending locations.
MR. BARRON: We would move to strike that response as on the basis -- bases that we objected to this line of questioning and also now clearly that, in my view, is valid of the federal pre-emption doctrines that apply.
MS. CHABER:
Q You understood that I was asking you, doctor, for a response in ways other than advertising and promotion, were you not?
A I was.
MR. BARRON: My objections, however, still remain.
MS. CHABER:
Q Yesterday the lawyer for Philip Morris and Lorillard asked you questions about the Dark Ages and the Renaissance. Do you recall that?
A I do.
Q In your opinion do those topics have any relation or relevance to the subject-matter of your expertise?
A Not that I can see.
Q Now, you were also asked a question about whether or not you had a bias toward the tobacco industry. Do you recall that question?

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A I do.
Q And --
A Actually, bias was presumed in the way the question was framed.
Q And I believe you indicated that your attitude toward the tobacco industry had changed over time; is that correct?
A That's correct. There was a reflection of what I had learned.
Q When you went into your analysis and projects on looking at cigarette advertising research, promotion, effects on consumers, did you have a preconceived opinion with respect to the tobacco industry?
A Not at all.
Q Did you bear a bias toward the tobacco industry at that time?
A I did not.
MS. CHABER: What caused the change over time?
MR. DUNNE: Object. Overbroad.
THE WITNESS: Everything I've learned about the industry has been quite shocking to me, particularly the way it's used its advertising in a fraudulent way to mislead its consumers, the way it's failed to disclose a number of attitudes used in the

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products such as ammonia to boost the nicotine impact, the way it's designed products to fool the FTC machines by providing ventilation holes while still providing high levels of nicotine and tar to users, the way it's used its public relations as a disinformation campaign, and in general almost everything I've learned, particularly around things like targeting of kids and the long-standing tradition of most of that over the years, has led me to believe that this is an industry that acts against the public interest.

MR. BARRON: I would -- do you want to say something?

MR. DUNNE: Move to strike. Overbroad and irrelevant.

MS. CHABER:

Q Dr. Pollay, from your review of all the documents you have reviewed, from the various sources that were talked about yesterday and prior, from your years of experience, based on your knowledge, education, research, do cigarette companies target minors?

A Yes.

MR. DUNNE: I object. I'm sorry. Overly broad, vague and ambiguous. Go ahead. I'm sorry.

THE WITNESS: Yes.

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MS. CHABER:

Q Let's break that down company by company. Does your answer apply to Philip Morris?

A Yes, it does.

Q Does your answer apply to R.J. Reynolds?

A Yes.

Q Does your answer apply to Brown and Williamson?

A Yes.

Q Does your answer apply to Lorillard?

A Yes.

MR. WILNER: Time-wise, as to time?

MS. CHABER: As to time?

MR. WILNER: As to what time? What time period?

MS. CHABER:

Q Over what time period?

A Well, it's a bit more difficult to answer. There's a long history of evidence of targeting of kids. All the manufacturers were involved in advertising, for example, in circus programmes, Ringling Bros., Barnum & Bailey Circus programmes for, say, the period 1935 up to 1960, advertising in Sunday comics like Puck the Comet Weekly. There's the colour comics that come along with the Sunday newspaper, the major manufacturer advertising there. Firms like Brown and Williamson were putting out comic books. Philip Morris had a comic strip called Duke Handy specifically designed to market cigarettes. There's a long history of all the firms being involved in this way. You also see that in the pattern of the television buying that they employed in the sixties.

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Q Dr. Pollay, you have been cross-examined during this videotape for approximately 14 hours by the attorneys for the cigarette companies. Is there anything that's been shown by them or pointed out by them or in their questions which has changed your opinion in any way that cigarette companies target minors?

A No.

Q Is there anything in what the cigarette company attorneys have done during cross-examination here that has changed your opinion that cigarette companies attempt to reassure people who are smoking that it's okay to continue smoking?

A No.

MS. CHABER: Will you give me two seconds? I am probably done.

(PROCEEDINGS RESUMED PURSUANT TO A SHORT ADJOURNMENT)

MS. CHABER:

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Q Dr. Pollay, I was asking you questions about the cigarette companies targeting minors just two minutes ago?

A Yes.

Q And I believe I asked you what time period and you started to give some examples in terms of a long history and I believe you ended in the 1960s. Do you believe that that practice of targeting minors by the cigarette companies ended in the 1960s?

A I do not, and I believe the documents we've entered into testimony here illustrate the continuing strategic interest in children as a target market.

Q Can you tell us whether you are of the opinion that targeting to minors by the cigarette companies has ceased as of today in 1999?

A I do not.

MR. DUNNE: Object. Lack of foundation, overly broad.

THE WITNESS: I do not believe it has ceased. I see no changes in the nature of the advertising campaign to suggest a sudden reversal of policy or practices.

MS. CHABER: Thank you.

(PROCEEDINGS RESUMED PURSUANT TO A LUNCH ADJOURNMENT)

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EXAMINATION BY MR. BARRON:
Q Good afternoon, doctor. I just have a few follow-up questions for you. Are you prepared to proceed?
A Yes.
Q And as we mentioned before, if you need a break or a recess -- I know we've been going on for a while and if you think you need one because it's becoming difficult for you to give your best and most accurate answers, please just let us know and we'll accommodate you any way we can. And I have to rely on you to be the one to let me know if there's that kind of a situation that's developed, okay?
A Yes.
MS. CHABER: We just had a lunch break, counsel.
MR. BARRON: No. I understand. I understand. And the record I think is clear that we did do just that.
Dr. Pollay, is it true that you are the only one who's an expert that you know of who has because of what experiences you've had doing what you did concerning the tobacco issues developed the bias that you mentioned that you have developed against the tobacco companies?
MS. CHABER: Vague and ambiguous.

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THE WITNESS: I don't recall admitting to any bias. The knowledge I have is shared by many of the people, although I have a greater depth of knowledge on many topics because it's been my own research than some other people. And there are a lot of people who share the same conclusions about the industry and its targeting and misleading practice.
MR. BARRON:
Q What do you think you did do when you answered Miss Chaber's questions about bias just a few minutes ago before we broke for lunch? What did you think you were saying?
A That I said that I did not enter into this with any bias; that as a result of my research and the learnings I have required, that I now have conclusions based upon the evidence reviewed and I have knowledge as a result of my expertise and of review of evidence.
Q So you think the fair interpretation of your previous answers in that regard, especially even in response to Ms. Chaber's questions, was that you were denying that you had developed any degree of bias? That's the interpretation you'd like people to have of your testimony so far?

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A Yes. I think my opinions are the results of evidence and expertise and they're conclusions that are critical of the industry, but it's not reflective of prejudgment and bias so much as the opportunities to have had access to that evidence.
Q And you think a fair interpretation of your testimony so far, especially in response to Ms. Chaber's questions about that, is you feel you have maintained a very fair, balanced and reflective state of mind about the cigarette companies so that any of your opinions that you reach are not in any way affected by any degree of bias or in any way influenced by bias; is that correct?
A They're not affected in any way by inappropriate. The learnings I acquire at this point in time are accumulative on top of the many things I've learned over the past decade, so that my opinions are subject to modification as I learn supplemental information.
Q I'm not sure what your answer to my question is. Are you suggesting that you have a degree of bias, but it's not inappropriate and that's what you've been meaning to have people interpret your

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answers as suggesting?
A Absolutely not. I -- I in effect find it offensive, the notion of bias, because it's typically used as something inappropriate, that is unwarranted by the evidence. My work is carefully researched and cited in peer reviews, subject to review by peers. My conclusions are set forth after displaying the evidence that I've considered and are consistent with that evidence.
Q Well, we've talked about the good old English language. Do you believe that the word bias means that a point of view has to be unwarranted before it is biased?
A Yes. I think that's the way it's typically used. It suggests a prejudice or inappropriate judgment.
Q And so what you want to now indicate for all those who are watching this and who will be reading this is that in responding to Ms. Chaber's answers, you were doing your best to try to vigorously deny that you had developed any attitude towards the tobacco industry that is anywhere close to the nature of a bias that would affect any way about -- any way in which you went

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about your business in either looking for material to develop opinions or ultimately in developing and testifying about those opinions? Is that the way your testimony should be viewed?

A My responses to her were about the central themes of the knowledge I had acquired and the reasons why my opinions about the industry and its behaviour took the shape they did.

MR. BARRON: Are you aware, for example, because of your many involvements as an expert witness that in fact juries are cautioned normally by instructions, and including California, when they go to evaluate an expert to evaluate whether that expert has had or has developed any bias that might affect the way in which the expert went about his or her work and therefore affect the opinions that the expert renders?

MS. CHABER: Objection. Argumentative.

THE WITNESS: No. I'm not aware of California proceedings.

MR. BARRON:

Q Are you aware of any state or any Federal Court that allows a jury to evaluate an expert's state of mind concerning whether any bias has been developed?

A It wouldn't surprise me if that were part of the

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charge to juries.

Q Are you aware that there are occasions when some people are hired as experts where they become inclined to be so competitive in favour of an attorney or a party, for whatever reason, that the work that they undertake --

A Excuse me. If you could direct your comments to me rather than to the far wall, I would have an easier time understanding what you're saying.

MR. BARRON: I'm sorry. I wasn't trying to do anything. I was just trying to gather my thoughts. Are you aware --

MS. CHABER: To be fair, I think all the witness is asking you is if maybe you'd turn your -- your chair in a way so that your face isn't facing the other way so he can actually understand you better.

MR. BARRON:

Q I'll face my chair any direction that you would like me to do. Is this okay for a position?

A Yes. I just would like to be able to hear what you're saying instead of your speaking to the microphone away from me.

MR. BARRON: Are you aware that there are occasions when people get hired as experts in cases and over time they become so competitive for the side that

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has hired them that they begin to have their judgments affected in terms of, for example, how thoroughly and exhaustively they look for appropriate material to review before developing opinions?

MS. CHABER: Objection. It's argumentative, vague and ambiguous, assumes facts not in evidence, incomprehensive.

THE WITNESS: No. I'm not aware of that.

MR. BARRON: Or situations like that where after gathering the material their opinions and judgments about the material become affected by the degree of competitiveness that they have developed over time?

MS. CHABER: Same objection.

THE WITNESS: I have no knowledge of that.

MR. BARRON: Or to phrase it another way, affected by a degree of bias?

MS. CHABER: Same objection.

MR. BARRON:

Q Could I have your answer?

A If there's -- when there's a question pending. The last thing you said or in another way affected by a degree of bias. That doesn't strike me as an interrogation.

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MR. BARRON: Okay. Or where because of all those circumstances I just described, the person retained as an expert begins to develop a bias that affects again either the way in which they go about trying to collect material to review, the way they select which material to focus on, and therefore the types of opinions also that they develop?

MS. CHABER: Same objection.

THE WITNESS: I have no knowledge.

MR. BARRON: Can you imagine that that kind of thing can happen, though, unless one is fairly fastidious and careful about trying to void that from happening?

MS. CHABER: Same objections. Calls for speculation.

THE WITNESS: I can imagine it's a possibility.

MR. BARRON: Now, can you imagine that that kind of a situation can result, for example, in a witness losing a degree of perspective so that the witness might even be caused to think that the witness has heard the other party against whom the witness is offering testimony say something that in fact that party has never really said?

MS. CHABER: Again, same objection.

THE WITNESS: Are you asking me to conjecture if that's a

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possibility?
MR. BARRON:
Q Yes.
A I guess it's a possibility.
Q That's not ever happened to you however, though, has it?
A I can't be certain of that. Not to my knowledge.
Q Well, I'd like to know, first of all, precisely where some statements were made that you mentioned. I wrote down as carefully as I could some statements that you attributed to the tobacco industry, and I have the time down here even when it was said so we can search for it with the court reporter if there's any question about you having said it. And I have you saying something very close to the fact that you have seen industry statements that have been made that cigarette smoking is no more dangerous than drinking tomato juice. Now, do you remember saying something like that?
A Yes. There have been industry statements reported in the popular press comparing smoking to tomato juice, comparing it to gummy bears, and similar comparisons.

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Q Do you want to be as specific as you can, first of all, since that's kind of striking in terms of statements? Do you have that with you that you could share with us so we'd know who this industry person was, from which tobacco company, whether it was one of my clients, for example, who said that or one of its employees and then I'd be able to know which employee it was?
A No, but I suspect you could key in tomato juice into your computers and find the document.
Q Now, another example might be that you mentioned that you came to some conclusions about whether the tobacco companies tried to protect copyright that they had and you were specifically, as I remember, talking about the fact that there was no attempt to use the power of the copyright law to prevent the sale by other people of candies that looked like cigarettes, correct?
A There have been candy cigarettes on the market for some time over many decades without that being shut down by the industry.
Q And so what you did was from the fact that you knew that candy cigarettes were marketed at times and sold -- and, incidentally, you know, of course, and we agree, it was not by a tobacco

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company that they were marketed and sold, correct?
A No. The point is that the tobacco companies' copyright materials, that is the designs, the logos, the selling, the slogans and the like were being employed by another firm when that was an infringement on their copyright.
Q Right. And so what you did is you said to yourself in essence, gee, it's not really a very good idea for underage people in terms of smoking ability to be subjected to candy cigarettes which they might start to pick up and use as legal age smokers would use in mimicking that process and, in fact, if the tobacco companies did not want to encourage those underage kids from developing some interest in smoking while they were under age, the tobacco companies ought to try to exercise their copyright law rights and prevent that from happening; isn't that in essence your theory?
A Yes. In essence that was I think the thrust of my comment, particularly given the large army of lawyers in the employ of the tobacco industry.
Q Right. And so in making a comment here for the jury's benefit about a large army of lawyers and

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about the copyright principles that might protect the tobacco company, what you did was you concluded that the tobacco companies didn't do what they should have in that regard, correct?
A Exactly. I mean I have here a sample of the Marlboro candy cigarette that your company in particular could have prosecuted and did not.
Q And then what you did, because you wanted to make sure that you would avoid being in any way biased or any way competitive against the tobacco companies, you went about doing what you ought to do as a fair person in trying to find out what, if anything, the tobacco companies did to try to prevent candy cigarettes from using their copyright intellectual properties such as their logo, correct?
A I searched the historical record and found that the people in the industry made the comments that they could go ahead and do this without fear of prosecution because the industries were tolerant of the behaviour.
Q I'm sorry. Which material did you look at?
A The historical record. All of the citations and quotes appear in the surgeon general's report in 1994.

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Q And you found no evidence that any effort had been made by the tobacco companies to try to use the copyright laws to prevent cigarette candy -- candy cigarettes from being made, correct?
A What's reported there is the industry -- that is people in the candy industry -- commenting that they felt quite secure in their use of it because the -- the tobacco industry was turning a blind eye toward it and then I noticed -- this was comments I have made -- I forget when, sixties or seventies. And then we know that candy cigarettes were still in wide availability for a number of brands even as late at 1986, so that practice of toleration seems to have continued for a number of years.
MR. BARRON: So I didn't quite get whether your answer was a yes or a no before what you just told me and could we have the question reread so we're clear on the record what your answer is, try to get either an affirmation or a denial of what my question was?
(LAST QUESTION READ BACK)
MR. BARRON:
Q Do you have the question in mind, doctor? Can you answer it yes or no?

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A I recall seeing no evidence of that. I'm happy to look at evidence if you have some.
Q Well -- but we're beginning with the opinion you gave, and you gave it under oath in front of the camera for any jury that might see this, so I'm trying to now explore how you went about reaching that very fair, impartial, noncompetitive opinion. And what you did was is you went to a surgeon general's -- I mean a surgeon general's section, I guess, and looked at that section summary of what that author said, that author gained some way from some information of the elicit -- not elicit, but cigarette candy companies, correct?
A No.
Q What else did you do?
A I was the author in question. The materials published regarding candy cigarettes in the surgeon general's report in 1994 was my research and it was based upon trade sources, which was the only source of information available at that time with respect to this issue of candy cigarettes, that and there was at least one scholarly article about the problem. I believe it was authored by a Dr. Blum.

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MR. BARRON: Okay. That's actually more helpful than having somebody else author it. So, actually, you were the one, then, who went about in this very fair and impartial effort, also now on behalf of the surgeon general, to answer that question and so what you did was you tried to gather every trade source that might exist on that issue, correct?
MS. CHABER: Move to strike. The premise is argumentative.
THE WITNESS: I reviewed all of the US tobacco journals, Advertising Age journals, advertising and selling similar marketing journals as indicated in the various compilations of the archives and the working papers therein, and from all of those materials extracted any information about candy cigarettes.
MR. BARRON:
Q And did you provide the citations in the chapter that you wrote that would demonstrate this significant effort you made to try to answer this question in a fair and impartial way?
A Well, the citations would be to those things found. There wouldn't be a citation trail of all those things consulted which were unproductive.
Q Would you list for me, then, as specifically as you can all those sources that you looked for?

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A I have done so and they appear in that surgeon general's report.
Q All right. That's what you found. Do you have a list that is as precise as possible as to all sources that you looked --
A Yes.
Q -- to?
A Their list has also been provided to you as a list of working papers which identify chronological notes taken from Advertising Age over the various years, chronological notes taken from advertizing and selling, chronological notes taken from the US Tobacco Journal various, other chronological notes from various and sundry locations and other notes from other periodicals of a trade nature.
Q And the scholarly article was written by whom?
A My recollection is that there was a note in -- with respect to candy cigarettes authored by Dr. Blum, B-l-u-m.
Q Now, in this very fair, impartial and noncompetitive effort that you were making in this regard, did you consider the possibility of specifically asking one of the tobacco companies, for example one of my clients, like Philip Morris

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or Lorillard, if in fact it had any proof or evidence that it had made an effort through, for example, even a lawyer from what you call this vast army to try to do something about restricting or preventing the use of its intellectual property, signs, logos, and name by candy cigarette manufacturers?

A I took the mere fact of the persistence of products like this as to be evidence that whatever effort might have been undertaken was inadequate or partial and did not stop the problem.

Q So you didn't consider it worthwhile even to write a one-paragraph letter to one of the companies asking for them to answer the question whether they had made any effort or not and if so, how and through whom and through what lawyers, with what results, correct?

A In my experience the companies would not be responsive to such inquiries. They're not even responsive to similar inquiries when made very officially by lawyers.

MR. BARRON: Now, have you asked any of these lawyers whether in fact what you think is this very fair, impartial and noncompetitive opinion actually is

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just that or whether there might be some evidence that in fact efforts were made by one or more of the tobacco companies to prevent candy cigarette manufacturing and selling?

MS. CHABER: Lacks foundation, argumentative.

THE WITNESS: Had there been successful efforts by the tobacco lawyers, we would not see this kind of problem and I would presume that the tobacco lawyers would present to me any such documents and I'm happy to review any such documents you may have.

MR. BARRON: I didn't get the impression you wanted to give me a yes or no to my question, so could we have the court reporter read it back to you and see if you can do that for me now?

MS. CHABER: Move to strike comments of counsel other than read back the record.

(LAST QUESTION READ BACK)

THE WITNESS: I have not asked plaintiff lawyers that information because I presume the defence lawyers will provide it to me and I would be happy to look at such information if you'd care to provide it to me.

MR. BARRON:

Q Now, I think what I prefer to do on that regard is save it and I will just tell you there is, I

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believe, such evidence and we'll go on to something else.

A That may be.

MS. CHABER: Move to strike. Counsel, are you offering to produce it?

MR. BARRON:

Q What we'll do is go to the next subject, which is you talked about Hill & Knowlton in response to questions, including some recently by Ms. Chaber, correct?

A Yes.

Q And you have an exhibit before you in which you have produced certain Hill & Knowlton documents, correct?

A Yes.

Q And which exhibit is that?

A I don't know. You maintained the exhibit list. I don't recall which one.

Q Well, I don't mean to make it a quiz. I can try to help you. I think it's Exhibit 1.

A I can find it. It's just your cross-examination.

MR. BARRON: Well, we're kind of here in a joint effort trying to get information to somebody who decides the case, so if we could work together, we could

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probably help that group and also get through this as quickly as possible.

MS. CHABER: Move to strike comments of counsel.

MR. BARRON:

Q I do think it's Exhibit 1.

A I have --

Q But --

A -- Plaintiff's Exhibit 1 with me, yes.

Q Is that the one, because I don't have Exhibit 1 with me. That's the reason I'm asking.

A Yes.

Q Okay. How many individual documents are there in Exhibit 1 from the Hill & Knowlton documents that are in effect there because they were copied from those contained in the Wisconsin Depository?

A There's a total of 32 -- the tabs are enumerated from 1 to 32 and in addition there is a 3.1, 3.2, 26.1, 26.5 insertions, so that's another four. So over 30. It looks to be 35 or so.

Q How many Hill & Knowlton documents do you have here in Vancouver that are not there part of Exhibit 1?

A I don't know.

Q What's your best estimate?

A I don't know. I mean there's some additional

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boxes. I have no idea of the number of documents that may be contained in those boxes.
Q Can you help me out? When we're talking about boxes, are we talking about like the proverbial bread box? Are we talking about big banker's storage boxes or what are we talking about?
A Paper boxes, the kind of boxes that paper comes in.
Q And how many boxes are we talking about?
A I don't recall precisely. It's in the inventory of the archives, which you've had access to. I believe there's at least one box there that may be a compilation of Hill & Knowlton documents that have come in from various sources.
MR. BARRON: Did you read each and every of the Hill & Knowlton documents that were in the Wisconsin Depository that applied to Hill and Knowlton's involvement with the tobacco industry research committee, otherwise known as TIRC?
MS. CHABER: This was asked and answered during I believe Mr. Grossman's cross-examination five months ago, counsel.
THE WITNESS: I believe I reviewed all the available documents, at least those available at that resource at that time.

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MR. BARRON: And then have you brought what you thought were the most compelling documents in effect indicting Hill & Knowlton's activity or the tobacco industry research committee's activity and bundled those together as they now appear as part of Exhibit 1?
MS. CHABER: Argumentative, vague and ambiguous.
THE WITNESS: No.
MR. BARRON: Did you bring documents that tended to shed a favourable light, if any, on Hill & Knowlton, the tobacco industry research committee, and its activities?
MS. CHABER: Lacks foundation, vague and ambiguous, argumentative.
THE WITNESS: I think it's up to the jury to decide what's illuminated is favourable or unfavourable. The -- I tended to bring documents that shed light on a variety of the activities, the expenditure patterns, the statements of goals and purposes, the roles and functions of various people and the activities, the timing of things.
MR. BARRON:
Q Well, when you say brought documents that illuminate, you had to select some that you thought would help illuminate for the jury,

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didn't you?
A Yes.
Q And you wanted to be very careful not to be competitive and biased as you went about the selection process, correct?
A I chose a cross-section of documents to show a variety of the activities and roles at various points in time.
Q Sure. And so when you wanted to illuminate, for example, the amount spent on research grants versus the amounts spent on other things, you tried to pick a document that you thought you wanted to illuminate?
A Excuse me. You're again talking to the far wall. I don't know if you're embarrassed by your question, but I'd appreciate it if you'd look at me.
Q No. Actually, I was just trying to formulate the question.
A Well, it's not written on the back wall. It's --
Q Doctor, when you went about this fair and unbiased, noncompetitive effort to select documents that you thought would illuminate fairly for the jury and issues such as the amount of spending on research by the tobacco industry

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research committee, you picked one document only, which was the budget for 1955, correct?
A No. Well, the document shows budget information for the first two years of operation, the initial year of '54 and the plan year for '55.
Q It was the '55 budget, however, that reflected on the '54, correct?
A I believe so. There may be more than one budget document, but there's only budget information, as I recall, for those two years.
Q And was that, in your mind, as you selected that document supposed to illuminate for the jury the most amount spent by the TIRC during the time that Hill & Knowlton was assisting with the TIRC effort concerning research?
A No. I think that it indicates the nature of their priorities by displaying how they spent their money in their formative years.
Q And do you have any other budgets available to show the jury that would illuminate the issues such as whether the amounts spent increased over time or whether it seemed to increase, as you call it, in a fraction or percentage of their budget over time?
A No, I don't.

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Q Is it true that in fact the Hill & Knowlton documents consist, at the Wisconsin Depository concerning the TIRC involvement, in numbers that approximate 3,300?
A I don't know.
Q Would that seem to be about the same number that you've got in these many boxes that you talked about you have in Vancouver somewhere?
A No.
Q You've got a smaller section or fraction than that?
A That's correct.
Q Do you have any budgets in these other boxes other than 1955 during the formative years of the organization?
A Not that I recall.
MR. BARRON: So when you were in Wisconsin and selecting in a fair and impartial way material, you can only remember selecting the early 1954, '55 budget information to illuminate the issues of budgets?
MS. CHABER: Lacks foundation.
THE WITNESS: As I say, I was selecting budgets to better understand the purposes and intention of the organization by looking at its activities during its formative years.

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MR. BARRON:
Q I'd like to talk to you a little bit about teen -- excuse me -- underage marketing if I could. Ms. Chaber was interested in following up on this topic of your view of the use of male and female genitalia in advertisements. And can I ask you this: Over the recess after the time that I asked you questions about Marlboro and that canyon that's portrayed there in one of those advertisements, did she or any of the plaintiff's lawyers express to you some concern that your statements concerning that ad might be viewed as questionable or extreme?
A No.
Q Did she or anybody suggest to you that someone looking at that might wonder whether you hadn't become somewhat tilted or biased in a way as you went about looking at the question of the intent or effect of advertisements by a particular tobacco company?
A No.
Q There was a question asked of you that was perhaps along the lines of trying to find support or in some way bolstering your view about that subject and it had to do with -- and I wasn't

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quite clear on this -- that there is some trade journal articles that in some way support your view about the use of male and female genitalia in cigarette commercials or advertisements; is that correct?
A That is correct. We discussed this in your cross-examination yesterday.
Q Okay. Would you please bring out for us today so we can all evaluate it any articles that are authored by people who say that they saw the same imagery, that is either symbolic, as you call it, or subliminal, as you call it, in that Marlboro ad with the canyon?
A No.
Q Why can't you do that?
A Because I don't have that.
Q Do you have it somewhere?
A No.
Q Have you ever seen it?
A No.
Q Well, if these types of journals had an interest in that subject-matter, can you explain why it is that they don't comment on that?
A Well, it's been published already and so the academic journals wouldn't republish it and the

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comments in the trade press were on the more egregious examples of a continuing nature like the Camel campaign. The Marlboro's extensive use of subliminal techniques was of a very isolated single-shot example that I don't believe is characteristic of the Marlboro advertising. It came and it went, perhaps after being identified so it's no longer there to provoke commentary.
Q By the way, you had an opportunity to comment on what you believe to be either the intent or impact or both of cigarette advertising when you participated in providing material for the eventual surgeon general's report, correct?
A Yes.
Q And --
A On several occasions.
Q And the subject of the use of male and female genitalia, either in a symbolic or a subliminal way in advertisements, was something that certainly the surgeon general would want to know about if in fact it occurred, correct?
A I can't speak to that. I haven't had any inquiries from the surgeon general about that.
Q Well, golly, that kind of confuses me a little bit because, see, the way I would sort of assume

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it worked, and then help me out if I'm wrong, is the surgeon general's kind of looking to you as the expert in advertising to help the surgeon general come out with important public information on that subject rather than you looking to the surgeon general to have the surgeon general tell you what the surgeon general thought?

A Excuse me. If you could cease from talking to the far wall and talk to me, I'd appreciate it.

Q I just turned my head, doctor. I'm sorry. Did you not hear my question?

A I just want to have your attention so I can understand your question. Every time you turn away, it becomes difficult for me to hear. It becomes more of a mumble.

MR. BARRON: I'm sorry. As I was saying, that answer you gave kind of confuses me about how all that worked and, of course, I was never part of it. I would kind of have the idea that the surgeon general would come to you as the expert in advertising and expect you to help the surgeon general out with what ought to be talked about that had some public health significance like the use of that kind of imagery rather than you sort of waiting

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for the surgeon general to tell you that you ought to address an issue like that. Why do I have that kind of confusion?

MS. CHABER: Objection. Calls for speculation.

THE WITNESS: I have no way of knowing the sources of your confusions.

MR. BARRON:

Q Okay. Well, can you help me out?

A I have no way of helping you out in the sources of your confusions.

Q Well, how did it really work? Did you expect the surgeon general to come to you and tell you that it wanted you to address that issue or do you think really the surgeon general expected you to let the surgeon general know if in fact you had these opinions that had these health consequences?

A Well, I think the former would be -- the surgeon general's reports are usually decided by senior executive committee as to a theme. Like, the one report may be focused on youth. Another report may be focused on tobacco consumption and its consequences among minority groups, or another report about women or another report about addiction or another report about heart disease.

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So each report has a particular theme and then contributions are solicited to develop that theme.

Q Well, golly, I guess all I'm asking is this: Do you think this whole issue of symbolic use of male and female genitalia such as in a Marlboro canyon shot is important enough to this issue of advertising by tobacco companies that it ought to be somehow publicized by the surgeon general or addressed by the surgeon general if in fact it's happening or do you think it's kind of unimportant?

A I don't think it's unimportant at all. I think it illuminates the variety of tactics that the industry uses from time to time, but I don't see that it would necessarily be of pressing interest to the surgeon general. I mean the subliminal advertising versus conventional advertising might be an unimportant distinction from their concern of public health.

MR. BARRON: So although the surgeon general you think would be interested in having something illuminated when it related to the variety of tactics of a tobacco company, you just somehow don't think it would be important enough to notify the surgeon

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general of your view of this symbolic and subliminal message used by the major tobacco company Philip Morris in one of its ads?

MS. CHABER: Objection. Argumentative.

THE WITNESS: My views and the views of others are readily available in the publicly available literature. My point is that they may well understandably feel that dealing with the conventional forms of advertising is the main thing that they need to focus on in public health issues; that the issue of subliminal advertising is a bit tangential from their central concerns.

MR. BARRON:

Q Well, do you ever -- let me back up. You really wouldn't know whether the surgeon general would think something like that's important unless you asked, would you?

A I'm not in regular communication with the surgeon general.

Q Well, you were when you were participating in the 1994 surgeon general's report and wrote a whole chapter?

A Well, not with the surgeon general himself.

Q Well, with people under him that would be responsible for addressing an issue like that?

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A Well, with the senior scientific staff, yes.
Q I mean did you ever think it might be worthwhile to just even give them a hint that you had some important information on this subject that you might share with them that they might view as somehow important and illuminating for them?
A Well, I didn't have this particular example at the time that was written. I might well have included it at that time, but I might not have. I mean I say it's not the most pressing issue, in my view, in the whole larger question of advertising and its role in enticing young people to take up a deadly and addictive habit.
Q Which example didn't you have in 1994 that you have in mind when you just gave me your answer?
A I didn't have the Marlboro example.
Q This canyon picture that you talked about and held up earlier in your testimony?
A Yes.
Q When did you first acquire that?
A In April of '94.
Q And when did your involvement with the 1994 surgeon general's report cease?
A I believe in 1992.
Q And you've had no communication with the surgeon

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general or any of the people under him, the senior scientists, on issues of advertising since that time?
A Oh, I have on other topics, on targeting of ethnic minorities, on the targeting of women.
MR. BARRON: I'd like to take a five-minute break. I don't have much longer. I just want to see if there's anything else I need to cover and get a little organized if I do and then we'll try to wrap this portion up.
(PROCEEDINGS RESUMED PURSUANT TO A SHORT ADJOURNMENT)
MR. BARRON: I don't have any other questions at this time. I do have a motion that I'll make at the close of the cross-examination of all the defendants, however, and to do that I will wait until Mr. Dunne has finished. I think he will be the next one.
MS. CHABER: You mean the recross.
MR. BARRON: What did I say?
MS. CHABER: Cross-examination.
MR. BARRON: Recross then. So I will do that. And, Kevin, do you want to come down here to do it?
MR. DUNNE: No. I'm going to do it from here. I've got my papers here.

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MR. BARRON: That's a better place because you're not distracted by the scenery.
EXAMINATION BY MR. DUNNE:
Q And I can look directly at the doctor. There's no way I can look away from him from this angle.
A You'll get a stiff neck if you do. You'll have to swivel 180 degrees.
MR. DUNNE: Well, I know you'll let me know if I do.
MR. BARRON: You guys have to close your blinds too because you've got a lot of good scenery out here. That's part of the problem with Vancouver.
MR. DUNNE:
Q Doctor, Kevin Dunne again and I represent Brown & Williamson, as you remember. And you did bring some documents in response to requests of counsel and I've looked through them and best I can tell, you haven't brought any documents -- internal documents from either Brown & Williamson or any of its advertising agencies; is that a fair statement?
A I brought what I was asked to bring. I don't recall that I was asked to bring Brown and Williamson documents of that nature.
Q Okay. And you didn't bring any?
A That's correct.

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Q All right. Good. And you haven't brought any American tobacco documents with you either, have you?
A That's right. Not as supplements to what was used in direct examination.
Q All right. Good also. Now, one of the things you did bring was that -- this critique of the white paper, correct?
A The notes annotating the omissions of the white paper? Yes.
Q That's right. And that's been marked as Exhibit 11, correct?
A Yes.
Q Okay. And then I think on a redirect by Ms. Chaber, you showed an example of what appears to be biased reporting in the white paper and that was the quote that was in the white paper from Dr. Hueper, correct?
A Yes.
Q And just so that we remember, Dr. Hueper was the chief of the carcinogenic study section, National Cancer Institute, right?
A Yes. I believe it's pronounced Hueper.
Q Hueper. Thank you. And Hueper wrote an article in the Rhode Island Medical Journal dated January

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of 1953, correct?
A Yes.
Q And the quote in the white paper is as follows: "It may be concluded that the existing evidence neither proves nor strongly indicates that tobacco smoking, and especially cigarette smoking, represent a major or even predominating causal factor in the production of cancers of the respiratory tract and are the main reason for the phenomenal increase of pulmonary tumours during recent decades. If excessive smoking actually plays a role in the production of lung cancer, it seems to be a minor one if judged from the evidence on hand."
Now, that's the quote that was in the white paper, correct?
A Yes. I don't have that in front of me, but I'll accept your assertion to that end.
Q I think I've got it pretty good. But, now, what you did was have omit information that you believe was omitted from Dr. Hueper's Rhode Island Medical Journal article, right?
A No. It wasn't omitted from the article. It was

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in the article. It was omitted from the way TIRC discussed the article.
Q That's right. Now, I see that this omission from TIRC was created by yourself and Dr. -- or was it Timothy Dewhirst? Now, who is Mr. Dewhirst?
A That has been asked and answered. He's a doctoral student in the University of British Columbia.
Q All right. Now, when you or -- who actually created the words that are on this critique of the Dr. Hueper article?
A Dr. Hueper.
Q All right. And so who went, though, to the Rhode Island Medical Journal article and extracted Dr. Hueper's comments and put them in your critique here?
A I did.
Q All right. So that you actually were the one who took the quotes out from the Rhode Island Medical Journal and put them in this piece of paper that is part of Exhibit 11; is that correct?
A Yes. That's correct.
Q All right. And did you do that for the purposes of litigation?
A Well, it was as much my own curiosity. In the

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process of litigation I had been presented with one of these documents and it was -- it was very obvious in that experience that that document had been quite misused and so I -- it caused me to wonder to what extent this entire white paper might be rife with similar examples of misuse of original documents, so I undertook it of my own initiative to explore that question.
Q All right. And so you did that and you've now testified that in your opinion this white paper unfairly characterized the opinions of various authors that are set -- or some of the authors that are quoted in the white paper; is that right?
A That's correct.
Q All right. Now -- and this one of Dr. Hueper is such an example, right?
A That's correct.
Q And the reason why you think the white paper unfairly took his comment out of context was because that apparently when you went back, you saw some quotes here such as the quote "direct relationship" and then it goes on to say: "It seems plausible, therefore, to formulate the hypothesis that there is a direct relationship

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between cigarette smoking and cancer of the respiratory smoke and that cigarette smoking may be a carcinogenic agent" and you thought this is a comment of Dr. Hueper's that should have been put in the white paper, right?
A Well, I can't say that each and every one of the comments, but there are eight comments identified that indicated that on balance Dr. Hueper didn't have quite the kind of opinion that he was presented as having and by the selection used.
Q All right. And so it's your view that this was an opinion -- this one -- you have these italicized, direct relationship, and that's -- that's a bit of a -- what, an introduction to the sentence here, right?
A Yes.
Q All right. Now, is it your testimony that Dr. Hueper is saying in his article that it seems plausible therefore to formulate this hypothesis of a direct relationship?
A I believe that's a quote from the article.
Q But I think you said this morning or earlier that that was Dr. Hueper's quote; is that right?
A I believe that's a quote from his article, yes.
Q All right. And that's why you think that they

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should have put that in the white paper, because this is really a contradiction of the quote they've got from Dr. Hueper?
A Well, it's one of eight examples provided here, yes.
Q All right. In fact, though, when you actually go back and read the Rhode Island Medical Journal carefully, you find out that that really isn't Dr. Hueper's opinion, is it? If you -- do you have Exhibit 14 in front of you, doctor?
A I do.
Q And Exhibit 14 contains at tab 1 the Rhode Island Medical Journal article itself; isn't that correct?
A Yes.
Q All right. And if you would look at page 29 from which the quote that you extracted came from, you will see in fact that is not Dr. Hueper's opinion. That's an opinion of Dr. Schrek, who he's quoting; isn't that true?
A No. There's no quotation marks. That's Hueper's own words describing what he takes to be the nature of Schrek's evidence and conclusions from Schrek.
Q Well, now, doctor, if you read the paragraph

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above -- two paragraphs above, it says: "From the results of these studies, the following conclusions were drawn by these investigators"?
A Right.
Q And he is quoting what these investigators concluded, not his opinion?
A No. He's not quoting. If he were quoting, there would be quotation marks. It's his own words and he has chosen to share with the readers these conclusions he feels are important.
Q Well, doctor, isn't it a fact that he has Schrek, et al and then he goes on to paraphrase what Schrek, et al have said in their studies?
A Well, it's not clear that this is what -- it's a paraphrase of what they've said. It's Hueper's statement of what the conclusions are from those studies or by those investigators.
Q He says: "The following conclusions were drawn by these investigators"?
A Yes.
Q These are not the conclusions that Dr. Hueper himself draws, are they?
A These are Dr. Hueper's selections of conclusions that he felt were important enough to be included in his review of the literature.

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Q Nevertheless, at the end of the day --
A And in his own words.
Q That's right. Despite that, at the end of the day, after citing all these other articles and their conclusions, he states his own conclusion at the end of the paper under Conclusion, correct?
A I don't see the section you refer to.
Q Well, look on page 34.
A I don't see a section headed confusion -- or Conclusion.
Q Well, look on the last paragraph at the bottom of the page on 34, right-hand column.
A Yes.
Q All right. And doesn't Dr. Hueper say, after reciting various conclusions of other investigators, "It may be concluded that the existing evidence neither proves nor strongly indicates that tobacco smoking, and especially cigarette smoking, represent a major or even predominating causal factor in the production of cancers of the respiratory tract and are the main reason for the phenomenal increase of pulmonary tumours during recent decades"? That's his conclusion which he says at the end of the paper

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after he cites the conclusions of Schrek, Ochsner, et cetera; isn't that right?
A Yes.
Q All right. And, in fact, you go on in your critique here. You say: "Smoking -- or lung cancer prospects are frightening". And you cite that. In fact, that citation to lung cancer prospects are frightening is really again a paraphrase by Hueper of Dr. Ochsner?
A Yes. Again, it's -- well, it's not paraphrase. It may not be precise. It's Hueper's text describing Ochsner's work.
Q All right. And, likewise, the cite with respect to smoking an important factor is again Hueper paraphrasing Doll and Hill, correct?
A Yes.
Q Isn't that right?
A Yes.
Q All right. So at the end of the day, the white paper truly does state exactly what Hueper's opinions are after he has reviewed the rest of the literature; isn't that a fair statement?
A It's fair that it reflects his opinions after the consideration of these few things. The public would be better informed if they also were aware

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of these other studies which the white paper does not bother to share with the public.
Q Well, actually, the white paper starts out by setting forth the opinions of Drs. Wynder, Graham, Ochsner, Doll and Hill?
A No.
Q Well, I'll read it to you. The first page, Introduction:
"In papers read before scientific groups and published by medical journals, Drs. Ernest Wynder, Evarts Graham and Alton Ochsner and others maintain that the sharp rise in lung cancer reported in this country was compatible with greatly increased use of tobacco. A similar statistical association was suggested in England by Drs. Richard Doll and Bradford Hill. In addition to this alleged statistical association, considerable attention was paid to reports of experiments in which Drs. Wynder, Graham had been able to induce skin cancer on mice by application of cigarette tars."
Now, in fact that very same information that is set forth in the introduction of the white paper

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is the information that's contained in the Rhode Island Medical Journal after which Dr. Hueper gives his conclusion based on all that information?
A In part. It's not -- it doesn't include the Schrek stuff or the other information about the occupational disease rates among tobacco workers and other occupational issues that were Hueper's primary focus.
Q Well, you know, in fairness, though, you can't -- you know, I suppose you could just take all the medical journal articles and lump them in a box and send them off to people, but I don't think this was an unfair characterization of the opinion of Dr. Hueper drawn, quoted from this article, do you?
A Well, I do think it has these omissions which seem kind of conspicuous and certainly the work of someone like Schrek could have been included in the white paper if the white paper really thought it wanted to be comprehensive or fair.
Q Well, sure, but if you wanted to try to criticize any quote from any article, you could always find another quote in there and then take the position, see, that's something else. You

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admitted it. I mean this is a medical journal article that goes on for many pages, but at the end of the day, the quote is -- from the conclusion of Dr. Hueper is absolutely accurate, isn't it?
A Yes. It's punctuated perfectly.
Q Okay. Now, at the -- let me just turn -- let's take out another one here. Look at Exhibit 11, your critique of Bogen & Loomis.
A Pardon me? I'm lost.
Q That's all right. The one I wanted to discuss with you was the -- your critique of Bogen & Loomis.
A Cite number 19?
Q That's correct, doctor. All right. And it starts out -- it says: "Debunks cigarette ads. Study debunks misleading advertising claims re safety from cigarette filtration". Now, in fact, when you look at it, what these authors are debunking is set forth on page 1515:
"Recently aggressive advertisement has appeared for a particular form of cigarette holder, which upon examination is found to have little affect on the nicotine or gaseous products of

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combustion, which does remove the greater part of tarry less volatile constituents of the smoke."
So, in fact, he's not criticizing a -- a cigarette ad at all. He's criticizing the ad of somebody who's made a cigarette holder; isn't that true?
A Yes. He's debunking misleading advertising claims regarding safety from cigarette filters, filtration.
Q Well, actually, it has nothing to do with the filters that are attached to cigarettes. It's talking about a cigarette holder, isn't it?
A Well, it's a cigarette filter that's sold as a separate unit.
Q Right. It's not the cigarette filters that were later put on cigarettes after 1954, is it?
A Oh, no. This article was -- is very old. This article was 20 years old at the time it was used by the tobacco industry research committee. This is an article from 1932.
Q All right. And this article from 1932 has nothing to do with cigarette filters attached to the cigarettes themselves, does it?
A That's correct. In fact, the introduction of

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filters for most products comes after this health scare of 1953, '54.

MR. DUNNE: That's all I have, doctor. Thank you.

MR. BARRON: Well, remember, I do have a motion to put on the record.

MR. WILNER: Go ahead. Put your motion on. I have one question in redirect and then would you like to put your motion on first or second?

MR. BARRON: It probably would be better to put it on the end.

EXAMINATION BY MR. WILNER:

Q Okay. Fine. And my only question on redirect -- re-redirect is: Considering the entire white paper, including the points that you have been directed to, is it your opinion that the white paper is misleading?

A It is.

MR. WILNER: I have no further questions.

MR. BARRON: I would move to strike this testimony, including but not limited to those questions and answers to which we made objection and the grounds I think were set forth in those objections and I call particular attention to evidence code section 720 and evidence code section 801 as it applies to a purported testimony of a -- of a person offered as an expert.

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MR. WILNER: All right. Thank you.

MR. DUNNE: We are putting on the record also about the -- we have agreed -- plaintiff's attorneys and all defence attorneys have agreed that the discovery deposition that we were going to take now we could defer to another date to be mutually agreed upon to coincide with perhaps other testimony or depositions the doctor may be giving.

MR. WILNER: That is agreeable by the plaintiffs.

MR. DUNNE: Thank you.

MR. WILNER: Does this conclude, then, the videotape deposition of Dr. Pollay?

MR. DUNN: It does.

MR. WILNER: Thank you very much.

(ADJOURNED ACCORDINGLY)

Time: 4 1/2 hours

I hereby certify the foregoing to be a true and accurate transcript of the proceedings transcribed herein to the best of my skill and ability.

Kathie Tanaka, Official Reporter

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